AGENDA

The following will be considered at the Regular Meeting of the Doña Ana County Board of County Commissioners to be held on March 12, 2019, at 9:00 a.m. in the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces, New Mexico:

• **Invocation**: Paul Furth, House Church Leader, God’s Life House Church
• **Pledge of Allegiance**
• **Roll Call of Commission Members Present and Determination of Quorum**

COMMISSION CONVENES AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.

• **CHANGES TO THE AGENDA**: Fernando R. Macias, County Manager, will discuss

• **PET SHOWCASE**: ASCMV Staff will present

• **RECOGNITION OF THE MARCH 2019 FRESHMEN OF THE MONTH**: Miss Geny Renteria of New America School, Las Cruces—by Commissioner Isabella Solis, will present.

• **PUBLIC INPUT**
• **STAFF INPUT**
• **COUNTY ELECTED OFFICIALS’ INPUT**
• **COMMISSION INPUT**

PRESENTATIONS and PROCLAMATION:

1. Doña Ana County Advisory Committee on the Americans with Disabilities Act—Shelly Nichols-Shaw, Chair of ADA Advisory Committee/Meg Haines, EEO Specialist, will present.

2. Proclaim March 2019 as Women’s History Month in Doña Ana County—as requested by Commissioner Isabella Solis, District 4.
CONSENT AGENDA: The Board will be asked to approve by one motion the following items of recurring or routine business:

3. Minutes for the Regular Meeting of February 26, 2019 – Clerk’s Office.

4. Out of State Travel for the EEO Specialist/ADA Coordinator to Attend “The National SHRM Conference” in Las Vegas, Nevada—Meg Haines, EEO Specialist, will discuss.

5. Purchase of Two X-Ray Machines, Two Walk Through Metal Detectors, and Related Equipment—Captain Jon Day, will discuss.

6. Resolution Ratifying County Manager’s Signature on the Escrow Release Agreement Between the City of Las Cruces, Doña Ana County and PHC-Las Cruces, Inc. and Related Documents and Granting County Manager Authority to sign any other Necessary Documents related to the Release of Escrow Funds—Fernando R. Macias, County Manager, will discuss.

APPROVALS

7. Publication of Title and General Summary of Notice to Hold a Public Hearing to Consider and Adopt an Ordinance Approving the Admiral Cable Company Local Development Act (“LEDA”) Project Proposal, the Project Participation Agreement, the Intergovernmental Agreement and the Security Agreement—Chuck McMahon, Assistant County Manager, will discuss.

8. Fifth Amended and Restated Joint Powers Agreement Between the City of Las Cruces and Doña Ana County Providing the South Central Solid Waste Authority, Subject to Approval by the Secretary of the Department of Finance and Administration—Chuck McMahon, Assistant County Manager, will discuss.

9. Resolution Amending the Doña Ana County Americans with Disabilities Act Advisory Committee (ADAAC) By-Laws—Meg Haines, EEO Specialist, will discuss.

10. Resolution Amending the Doña Ana County Americans with Disabilities Act Advisory Committee (ADAAC) Goals and Objectives—Meg Haines, EEO Specialist, will discuss.

CORRESPONDENCE

11. Cindy Padilla, County Clerk’s Office, will present to the Commission any claims received by Doña Ana County.

COMMISSION ADJOURNS AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.

THIS AGENDA IS SUBJECT TO CHANGE

NOTE: Doña Ana County will ensure effective communication with individuals with disabilities and will, upon request, provide auxiliary communication aids and services to afford those individuals equal opportunity for participation in Doña Ana County sponsored meetings, events, or activities. Any request should be made to the Americans with Disabilities Act Coordinator, in
writing, or by phone, as soon as possible prior to the event at which accommodation is needed. If you have any questions regarding examples of reasonable accommodations, please contact the ADA Coordinator, at 525-5884 (voice) or 525-2951 (TTY), 845 N. Motel Blvd. Las Cruces, NM 88007.

Spanish language interpretation services are now available upon request for participation in Doña Ana County sponsored meetings, events, or activities. Please contact the Constituent Services Department at 525-6163, at least 48 hours prior to the event. Servicios de interpretación en las juntas será disponible por petición. Por favor contactar la Oficina de Servicio a la Comunidad y Constituyentes 525-6163 por lo menos 48 horas por adelantado para pedir este servicio.
DOÑA ANA COUNTY ADVISORY COMMITTEE ON THE AMERICANS WITH DISABILITIES ACT.

SUMMARY OF ITEM TO BE CONSIDERED
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED
The Advisory Committee on the Americans with Disabilities Act will present updates on its activities and membership. Ms. Shelly Nichols-Shaw, Chair of the ADA Advisory Committee and Ms. Meg Haines, EEO Specialist/ADA Coordinator will be presenting.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED
Executive Summary – Doña Ana County Advisory Committee on the Americans with Disabilities Act.

SUMMARY OF FINANCIAL IMPACT
N/A

ADMINISTRATIVE REVIEW AND APPROVAL

Finance
Legal

Purchasing
Human Resources

Planning
Other

County Manager/
Agenda Review

Assistant County Manager

DOCUMENT CONTROL

Original/s for signature? □ Yes ☑ No  For Recording? ☑Yes □ No

Return original/s to: N/A  Name  Dept.

Send copy of recorded original/s (resolution and ordinances only) to: N/A  Name  Dept.

Deadline for return of document/s? Yes, return by: N/A or □ No
EXECUTIVE SUMMARY

Doña Ana County Advisory Committee on the Americans with Disabilities Act

Presented to the Doña Ana County Board of County Commissioners

March 12, 2019

Purpose of the ADA

The United States Congress identified “[t]he nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals[.]” 42 U.S.C. Section 12101 (a) (7). The mandate issued by the United States Congress imposes a duty on state and local governments to ensure that all public services are fully accessible to all citizens who wish to benefit from or participate in the public services, programs, or activities.

Background

The Doña Ana County Advisory Committee on the Americans with Disabilities Act (County ADA Advisory Committee) was originally established in 2001 by the Doña Ana County Board of County Commissioners to gather information and provide recommendations on issues related to the Americans with Disabilities Act (ADA) to ensure compliance with the federal mandate.

Doña Ana County re-affirmed its commitment to actively pursuing and ensuring equal opportunity and access to its services, programs, and activities according to federal law when it re-established the County ADA Advisory Committee on November 8, 2011, pursuant to the 2001 resolution, and appointed a five-member committee.

Currently, pursuant to Doña Ana County Resolution 2015-49, the County ADA Advisory Committee allows for the appointment of seven to nine committee members which include the County’s ADA Coordinator, Facilities and Parks Manager and the County Building Official as permanent committee members. Members of the public who are currently serving on the committee include: Shelly Nichols-Shaw (Chair), Rosie G. Talamantes (Vice Chair), Selma Nevarez (Secretary), and Diana Murrillo-Trujillo (appointment ended in 2018, but is seeking reappointment).

The County ADA Advisory Committee has been meeting on a regular basis, normally once per month. The Committee met 10 times during 2018. The Committee will continue to meet on a regular basis.

All meetings are open to the public. Regular meetings are announced seven days in advance through the local newspaper and radio stations. The agenda is posted on Doña Ana County’s website and on building bulletin boards at the government center. Guests attending a meeting are given the option of being added to an electronic guest list to receive future meeting notifications.
All meetings are recorded. The minutes contain a description of the subjects being discussed and any subsequent action. All approved meeting minutes are forwarded to the human resources director and are available for inspection or copying upon request.

**Accomplishments, Activities, and Future Projects**
As required by resolution, the County ADA Advisory Committee authored and approved a set of bylaws and a list of goals and objectives. Both documents were subsequently approved by the Board of County Commissioners. The bylaws and goals and objectives have recently been reviewed and revised by the Committee and are being presented to the Board for approval.

An electronic guest distribution list was established as an additional method of disseminating meeting announcements and information. The committee envisions further incorporating the use of technology to disseminate and gather information to engage employees and the public in matters related to the ADA.

Citizen concerns and questions are always welcome. All matters presented to the committee are referred to the most appropriate internal or external resource possible after careful consideration and discussion.

Doña Ana County departments play an integral role in the Committee’s work. Facilities and Parks, Risk Management, Building Services Division of Community Development, and Human Resources have been called upon to assist the Committee. The Committee looks forward to meeting with staff from other departments in the future to solicit their input on various projects.

The Committee has remained active in participating in various ADA events, such as the ADA Celebration that had been held every year and now is being held every few years. The ADA Celebration commemorates the anniversary of the signing of the original law enacting the ADA. Members of the Committee have assisted in the planning and set up of the ADA Celebration; as well as participating as a resource for patrons of the celebration.

The Chair of the Committee frequently attends the City of Las Cruces ADA Advisory Committee meetings and we hope to have increased collaboration between state and local governmental units in future endeavors.

In 2017, the EEO Specialist/ADA Coordinator presented a summary of the ADA Self-Evaluation Plan and revised Transition plan to the Board. The Self-Evaluation Plan was a project that took several years to accomplish with the help of the County’s ADA Advisory Committee and input from the public. The Self-Evaluation Plan and Transition Plan are available for inspection and are posted on the County’s website. The County’s ADA Advisory Committee is currently focusing efforts on finalizing an action plan to address identified barriers.

In 2018, the EEO Specialist/ADA Coordinator along with a member of the County Clerk’s office conducted ADA Checklists on the polling places identified in Doña Ana County. The Committee also evaluated barriers and provided feedback to the County Clerk’s office.
Future Events
The Committee looks forward in participating in the next ADA Celebration.

The Committee will continue to seek input from the public at regularly scheduled meetings.

The Committee will continue to work with County staff on the action plan to address barriers.

Committee’s Additional Comments
The membership of the County ADA Advisory Committee continues to be committed to ensuring accessibility to applicants, employees, and citizens who wish to participate in or benefit from Doña Ana County’s services, programs, or activities.
TITLE OF AGENDA ITEM TO BE CONSIDERED
PROCLAIM MARCH 2019 AS WOMEN’S HISTORY MONTH IN DOÑA ANA COUNTY

SUMMARY OF ITEM TO BE CONSIDERED
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

A proclamation naming the month of March as Women’s History Month.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED
Proclamation

SUMMARY OF FINANCIAL IMPACT
None.

ADMINISTRATIVE REVIEW AND APPROVAL

DOCUMENT CONTROL

Original/s for signature? ___ Yes   No  For Recording? ___ Yes   No
Return original/s to: ______________Name ______________Dept.
Send copy of recorded original/s (resolution and ordinances only) to: ______________Name ______________Dept.
Deadline for return of document/s? Yes, return by: _______________ or ___ No
Proclamation

Doña Ana County
State of New Mexico

WHEREAS, the Doña Ana County Board of Commissioners is pleased to recognize the accomplishments of the County’s residents, and

WHEREAS, the Month of March is traditionally designated as National Women’s History Month, calling upon all Americans to observe the month and to celebrate with appropriate programs, ceremonies, and activities, and asking them to visit www.WomensHistoryMonth.gov to learn more about the generations of women who have left enduring imprints on our history, and

WHEREAS, During Women’s History Month, we remember the trailblazers of the past, including the women who are not recorded in our history books, and we honor their legacies by carrying forward the valuable lessons learned from the powerful examples they set, and

WHEREAS, Because of the courage of so many bold women who dared to transcend preconceived expectations and prove they were capable of doing all that a man could do and more, advances were made, discoveries were revealed, barriers were broken, and progress triumphed, and

WHEREAS, Through hardship and strife and in every realm of life, women have spurred change in communities around the world, steadfastly joining together to overcome adversity and lead the charge for a fairer, more inclusive, and more progressive society, and

WHEREAS, During Women’s History Month, we honor the countless women who sacrificed and strived to ensure all people have an equal shot at pursuing the American dream, and though we have made great progress toward achieving gender equality, work remains to be done, because women still earn, on average, less for every dollar made by men, and

WHEREAS, This month, as we reflect on the marks made by women throughout history, let us uphold the responsibility that falls on all of us -- regardless of gender -- and fight for equal opportunity for our daughters as well as our sons, and

WHEREAS, it is the distinct pleasure and privilege of the Doña Ana County Board of Commissioners to bestow Proclamations, and all residents of Doña Ana County are represented by the Doña Ana County Board of Commissioners, and, therefore, speak with a united voice through the actions and deeds of this Board,

NOW THEREFORE, the Doña Ana County Board of Commissioners does hereby proclaim the month of March to be Women’s History Month throughout Doña Ana County.

PROUDLY PROCLAIMED this 12th day of March, 2019

Board of County Commissioners for Doña Ana County, New Mexico

___ yea ___ nay
Isabella Solis, Vice-Chair

___ yea ___ nay
Shannon Reynolds, Member

___ yea ___ nay
Lynn Ellins, Member

___ yea ___ nay
Attested: Amanda López Askin, County Clerk

___ yea ___ nay
Ramón Gonzalez, Member
### TITLE OF AGENDA ITEM TO BE CONSIDERED

Minutes for the Regular Meeting of February 26, 2019.

### SUMMARY OF ITEM TO BE CONSIDERED

INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

### DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

### SUMMARY OF FINANCIAL IMPACT

### ADMINISTRATIVE REVIEW AND APPROVAL

<table>
<thead>
<tr>
<th>Finance</th>
<th>Legal</th>
<th>County Manager/Agenda Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purchasing</th>
<th>Human Resources</th>
<th>Assistant County Manager/Peer Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Planning</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DOCUMENT CONTROL

Original/s for signature?  __Yes  No  For Recording?  __Yes  No

Return original/s to:  _______________ Name  _______________ Dept.

Send copy of recorded original/s (resolution and ordinances only) to:  _______________ Name  _______________ Dept.

Deadline for return of document/s?  Yes, return by:  _______________  or  __No
Chairwoman Isabella Solis called the Regular Meeting of the Doña Ana County Board of Commissioners to order at 9:00 a.m., on Tuesday, February 26, 2019, in the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces.

Time: 09:03:18

District 4: Isabella Solis, Chairwoman - Present
District 2: Ramon S. Gonzalez, Commissioner - Present
District 3 Shannon Reynolds, Commissioner - Present
District 1: Lynn J. Ellins, Commissioner - Present @ 09:07:23
District 5: Vacant

Invocation: Reverend Dr. Maria Goldstein, Voices in the Wilderness.

Time: 09:03:26

Pledge of Allegiance

Time: 09:06:58

Led by: Commissioner Shannon Reynolds.

Roll Call of Commission Members Present and Determination of Quorum

Time: 09:07:23

Led by: Cindy C. Padilla, Admin., Asst., County Clerk’s office.

COMMISSION CONVENES AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.

CHANGES TO THE AGENDA: Fernando R. Macias, County Manager, will discuss.
Changes: Fernando Macias, County Manager, stated that there are no changes that are being requested by management, however, would like to bring to the Commissions’ attention that Item #2 is a presentation related to the most recent audit and there is a companion, Item #9 and if the Commission, after they hear the presentation, chooses to move Item #9 up after Item #2, he would leave that at the discretion of the Commission.

PET SHOWCASE: ASCMV Staff will present.

Pet: A 2 year and 1 month old female black and white cat named Lilac who is ready for adoption.

EMPLOYEE RECOGNITION: The Commission will recognize Doña Ana County employees for their years of service to Doña Ana County — Read by Fernando R. Macias, County Manager, will present.

Given by: 1) Humberto Martinez and 2) Reymundo Aldaz.

*In order to listen to Public Input comments go to Doña Ana County website: https://donanacounty.org/bocc/video.

PUBLIC INPUT

STAFF INPUT
Given by: 1) Jaime Quezada, Undersheriff.

*In order to listen to Staff Input comments go to Doña Ana County website: https://donanacounty.org/bocc/video.

COUNTY ELECTED OFFICIALS’ INPUT

Time: 09:34:23


*In order to listen to County Elected Officials’ Input comments go to Doña Ana County website: https://donanacounty.org/bocc/video.

COMMISSION INPUT

Time: 09:27:28

Given by: 1) Ramon S. Gonzalez 2) Isabella Solis and 3) Lynn J. Ellins.

*In order to listen to Commission Input comments go to Doña Ana County website: https://donanacounty.org/bocc/video.

PRESENTATIONS and PROCLAMATION

1. Kinder Morgan Pipeline Rupture and Remediation Update—Mr. Allen Fore, Vice President, Public Affairs, will present.

Time: 10:03:36

2. Doña Ana County Audit Report for the Fiscal Year Ending June 30, 2018—Farley Vener, President and Managing Shareholder, Hinkle and Landers, P.C., will present.

Time: 10:17:17

Public Input

Time: 10:30:52
Chairwoman Isabella Solis asked the Commission if they wanted to move Item #9 after Item #2, the Commission agreed.

ITEM #9

Resolution Accepting and Approving the Doña Ana County Audit Report for the Fiscal Year Ending June 30, 2018—Asma Dawood, Finance Director, will present.

Time: 10:33:40

Motion: Lynn J. Ellins
Second: Ramon S. Gonzalez

Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Yes
Ramon S. Gonzalez, Commissioner - Yes
Isabella Solis, Chairwoman - Yes

Motion passed

RESOLUTION NO. 2019-21

3. Proclaim the Month of February as Black History Month in Doña Ana County—as requested by Shannon Reynolds, Doña Ana County Commissioner, District 3.

Time: 10:34:28

Public Input

Time: 10:38:09

Given by: 1) Corey Stone.

Motion: Shannon Reynolds
Second: Ramon S. Gonzalez

Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Yes
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

CONSENT AGENDA

Time: 10:43:00

Items Removed for Separate Discussion: Item #5


5. Doña Ana County Treasurer’s Financial Report for the Months of November and December 2018—Eric L. Rodriguez, County Treasurer, will discuss.

Time: 10:43:47

6. Re-Assignment of Doña Ana County International Jetport Land Lease for Lot F-l 1, from the Estate of Robert Kern D/B/A Aviation Services (as Assignor) to the Co-Trustees of the Robert Kern Irrevocable Grantors Trust (as Assignee)—Bill Provance, Jetport Manager, will discuss.

7. Re-Assignment of Doña Ana County International Jetport Land Lease for Lot F-l 1, from the Successor Co-Trustees of the Robert Kern Irrevocable Grantors Trust (as Assignor) to Francis Aviation, LLC, (as Assignee)—Bill Provance, Jetport Manager, will discuss.

Motion to Approve Consent Agenda Items 4-7 to include the following:


Doña Ana County Treasurer’s Financial Report for the Months of November and December 2018.

Re-Assignment of Doña Ana County International Jetport Land Lease for Lot F-l 1, from the Estate of Robert Kern D/B/A Aviation Services (as Assignor) to the Co-Trustees of the Robert Kern Irrevocable Grantors Trust (as Assignee)s.

Re-Assignment of Doña Ana County International Jetport Land Lease for Lot F-l 1, from the Successor Co-Trustees of the Robert Kern Irrevocable Grantors Trust (as Assignor) to Francis Aviation, LLC, (as Assignee).

Motion: Lynn J. Ellins
Second: Shannon Reynolds
Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Yes
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

PUBLIC HEARING

8. Amend County Code Chapter 56. Industrial Revenue Bonds, Related to the Application Fees and Annual Administrative Costs, and Amend Chapter 179. Fees and Permits, as it Relates to Industrial Revenue Bonds of the Doña Ana County Code—Chuck McMahon, Assistant County Manager, will discuss.

Time: 10:48:26

Motion: Ramon S. Gonzalez
Second: Shannon Reynolds
Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Yes
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

ORDINANCE NO. 301-2019

APPROVALS

9. Resolution Accepting and Approving the Doña Ana County Audit Report for the Fiscal Year Ending June 30, 2018—Asma Dawood, Finance Director, will present.

NOTE: Item #9 was Moved and Approved after Item #2.

10. Resolution in Support of Spay/Neutering Funding from Pet Food Manufacturing Fees—Lynn J. Ellins, Doña Ana County Commissioner, District 1, will discuss.
Motion to Accept the Resolution:
Motion: Lynn J. Ellins
Second: Ramon S. Gonzalez
Time: 11:08:14

Motion to include a Friendly Amendment at the very end of the Resolution “Be it further resolved copies of this Resolution will be provided to the entire DAC Legislative Delegation”:
Motion: Ramon S. Gonzalez
Second: Lynn J. Ellins

Public Input
Time: 11:09:25
Given by: 1) Humberto Martinez.

VOTE ON AMENDMENT
Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Absent
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

VOTE ON APPROVAL OF RESOLUTION TO INCLUDE THE AMENDMENT
Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Absent
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

RESOLUTION NO. 2019-22
11. Resolution Authorizing Doña Ana County to Intervene in a Rate Case to be Filed by El Paso Electric Company Before the New Mexico Public Regulatory Commission—Fernando R. Macias, County Manager, will discuss.
Time: 11:11:14

Motion: Lynn J. Ellins
Second: Ramon S. Gonzalez

Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Yes
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

RESOLUTION NO. 2019-23

12. Approve a Resolution Opposing New Mexico House Bill 73 (Exempting New Mexico from the Observance of Daylight-Savings Time) and Senate Bill 226 (Exempting New Mexico from Reversion to Standard Time)—Fernando R. Macias, County Manager, will discuss.

Time: 11:17:33

Motion: Ramon S. Gonzalez
Second: Lynn J. Ellins

Public Input

Time: 11:29:51


VOTE ON MOTION

Lynn J. Ellins, Commissioner - Yes
Shannon Reynolds, Commissioner - Abstained
Ramon S. Gonzalez, Commissioner – Yes
Isabella Solis, Chairwoman – Yes

Motion passed

RESOLUTION NO. 2019-24

13. Doña Ana County Goals and Priorities for 2019—Fernando R. Macias, County Manager, will present.

Time: 11:40:52
NOTE: This Item was only a discussion item and did not require a Motion.

CORRESPONDENCE

14. Cindy C. Padilla, County Clerk’s Office, will present to the Commissioner any claims received by Doña Ana County.

Time: 13:40:44

Claims: 1) Richard J. Donaldson vs. DAC 2) Rosa Linda Garcia vs. DAC and 3) Frieda A. Nall vs. DAC.

COMMISSION ADJOURNS AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.

Time: 13:41:02

BOARD OF COUNTY COMMISSIONERS OF DOÑA ANA COUNTY, NEW MEXICO

Isabella A. Solis, District 4, Chairwoman For/Against

Lynn J. Ellins, District 1, Commissioner For/Against

Ramon S. Gonzalez, District 2, Commissioner For/Against

Shannon Reynolds, District 3, Commissioner For/Against

Vacant, District 5

ATTEST:

Amanda López Askin, Ph.D., County Clerk
**TITLE OF AGENDA ITEM TO BE CONSIDERED**

OUT OF STATE TRAVEL FOR THE EEO SPECIALIST/ADA COORDINATOR TO ATTEND THE NATIONAL SOCIETY FOR HUMAN RESOURCE MANAGEMENT (SHRM) CONFERENCE IN LAS VEGAS, NV.

**SUMMARY OF ITEM TO BE CONSIDERED**

The Board is asked to approve out of state travel for the EEO Specialist/ADA Coordinator to attend the National SHRM Conference, June 22-26, 2019, in Las Vegas, NV. SHRM is the world’s largest HR membership organization devoted to human resource management. The registration fee of $1670 is waived based on the EEO Specialist/ADA Coordinator volunteering at the conference. The track of sessions to attend include topics directly related to the EEO Specialist/ADA Coordinator job duties, such as sexual harassment, workplace retaliation, and the ADA.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Schedule of classes.

**SUMMARY OF FINANCIAL IMPACT**

Total cost is approximately $1450 and is included in the approved FY19 budget.

**ADMINISTRATIVE REVIEW AND APPROVAL**

<table>
<thead>
<tr>
<th>Finance</th>
<th>Legal</th>
<th>County Manager/Agenda Review</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purchasing</th>
<th>Human Resources</th>
<th>Assistant County Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DOCUMENT CONTROL**

- Originals for signature? **☐ Yes ☐ No**
- For Recording? **☐ Yes ☐ No**
- Return original(s) to: **N/A**
- Send copy of recorded original(s) (resolution and ordinances only) to: **N/A**
- Deadline for return of document(s)? **Yes, return by: N/A or ☐ No**
My Schedule

This is a planning tool only. It does not register you for events, prevent you from scheduling yourself in two places at the same time, or reserve a space in your selected sessions.

Due to the popularity of some sessions, we recommend adding 2-3 sessions per time slot in the event a session is full.

Based on your selected sessions, you will earn approximately 17.75 hours of credit. The actual number of hours will be based on your attendance.

MULTI-DAY OFFERINGS

You have no events scheduled for this day. Visit the complete conference schedule to find events.

SATURDAY, JUNE 22

1:00 PM to 5:00 PM

Session #702: Leadership Skills for the Senior HR Professional: Mastering the Art of Negotiation
Preconference Workshop
Additional Fee & Registration Required

SUNDAY, JUNE 23

1:00 PM to 2:00 PM

MEGA SESSION Leap! The Net Will Appear: How to Crash Through Comfort Zones and Overcome Fear
Mega Session
Room: TBD

2:30 PM to 4:00 PM

General Session featuring Johnny C. Taylor, Jr., SHRM-SCP and Martha Stewart
General Session
Room: TBD
MONDAY, JUNE 24

Implementing Strategies to Avoid Workplace Retaliation Claims
Concurrent Session
Room: TBD

General Session featuring Brené Brown
General Session
Room: TBD

Sexual Harassment Case Studies
Concurrent Session
Room: TBD

Enforcing Attendance Rules But Offering Reasonable Accommodation
Concurrent Session
Room: TBD

MEGA SESSION Detecting Lies and Deception: Practical Skills for HR Professionals
Mega Session
Room: TBD

Shaping Hearts, Minds and Corporate Cultures: Effective Prevention Training in the #MeToo Era
Concurrent Session
Room: TBD

Mental Health in the Workplace: HR’s Role in Promoting Environments of Acceptance and Productivity
Concurrent Session
Room: TBD
Communicate Your Way to the Top!: Communication Strategies for Female Leaders Who Want to Stand Out
Concurrent Session
Room: TBD

MEGA SESSION Candid Conversations That Drive Results
Mega Session
Room: TBD

TUESDAY, JUNE 25

MEGA SESSION My Employees Can Miss How Much Work?!: Managing the Challenges of Leave Under the FMLA and ADA
Mega Session
Room: TBD

Why Harassment Is No Longer Just a Compliance Issue, But a Brand Issue
Concurrent Session
Room: TBD

General Session featuring Vineet Nayar
General Session
Room: TBD

Do the Right Thing: A Workplace Harassment Prevention Simulation
Concurrent Session
Room: TBD

MEGA SESSION Making a Difference™: A Matter of Purpose, Passion and Pride
Mega Session
Room: TBD
Moving Beyond Unconscious Bias in the Workplace
Concurrent Session
Room: TBD

MEGA SESSION 99 Problems and Lawsuits Ain't One: Top 10 HR Strategies That Will Keep You Out of the Courtroom
Mega Session
Room: TBD

When Smoke Gets in Your Eyes: Legal Issues and Hiring Strategies in Era of Legalized Marijuana
Concurrent Session
Room: TBD

MEGA SESSION FLSA “Jeopardy” 2019
Mega Session
Room: TBD

When Looks Deceive: Detecting and Accommodating Invisible Disabilities
Concurrent Session
Room: TBD

WEDNESDAY, JUNE 26

Closing General Session featuring Blake Mycoskie
General Session
Room: TBD

MEGA SESSION The Neuroscience of Change
Mega Session
Room: TBD

PRINT MY SCHEDULE  VIEW ALL OFFERINGS
PURCHASE OF TWO X-RAY MACHINES, TWO WALK THROUGH METAL DETECTORS, AND RELATED EQUIPMENT

SUMMARY OF ITEM TO BE CONSIDERED
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED
Approve the purchase of two X-Ray machines, two walk through metal detectors and related equipment as listed on attached breakdown of costs by vendors. This purchase is to replace obsolete equipment and increase the physical security for detection of dangerous weapons on visitors at the District Courthouse. The current x-ray and walk through metal detectors at the District Courthouse are no longer functioning. This is included in the approved FY19 budget. Delegate signature authority to the county manager for all related documents.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED
X-ray machine, metal detectors and equipment cost summary
List of vendors and items to be purchased
Equipment quotes

SUMMARY OF FINANCIAL IMPACT
Total cost of $66,000.20 is included in the approved fiscal year 2019 budget.

ADMINISTRATIVE REVIEW AND APPROVAL

<table>
<thead>
<tr>
<th>Finance</th>
<th>Legal</th>
<th>County Manager/Agenda Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchasing</td>
<td>Human Resources</td>
<td>Assistant County Manager</td>
</tr>
<tr>
<td>Planning</td>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

DOCUMENT CONTROL

Originals for signature? ☐ Yes ☐ No
For Recording? ☐ Yes ☐ No
Return original/s to: Name Dept.
Send copy of recorded original/s (resolution and ordinances only) to: Name Dept.
Deadline for return of document/s? Yes, return by: or ☐ No
February 12, 2019

Lt. Samuel Ramos  
Dona Ana County Sheriff’s Office  
845 N Motel Blvd  
Las Cruces, New Mexico 88007

Greetings Lt. Ramos,

Thank you for your interest in Autoclear LLC X-ray Scanners. Per our most recent conversation, please find an additional revised and adjusted quotation for Model 5333 and 6040 Dual View X-ray Scanners.

Please confirm you have received this data and let me know what remaining questions you may have.

Gene Rowe  
AutoClear LLC  
Scintrex Trace Inc.  
gene@autoclear.com  
www.autoclear.com  
201.452.0849  
760.326.4737 (fax)

<table>
<thead>
<tr>
<th>Qty.</th>
<th>Product/Description</th>
<th>Unit</th>
<th>Extended</th>
</tr>
</thead>
<tbody>
<tr>
<td>1ea.</td>
<td>Model 5333 AutoClear X-ray Scanner (160Kv)</td>
<td>-</td>
<td>$15,500</td>
</tr>
<tr>
<td></td>
<td>Including: Linux OS (Touch Pad Operation), AutoMatalert, *autoNarcAlert</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Image Archiving to USB, Built-in Threat Identification Training Program,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Programmable Operator Panel, Remote Diagnostics and Video Trainer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1ea.</td>
<td>Model 6040 DV (DualView) AutoClear X-ray Scanner</td>
<td>-</td>
<td>$41,200</td>
</tr>
<tr>
<td></td>
<td>Including: Linux OS (Touch-Pad Operation), Dual 19&quot; Monitors, AutoMatAlert,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>*autoNarcAlert, Image Archiving To USB, Built-in Threat Identification</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Training Program, Programmable Operator Panel, Remote Diagnostics and Video</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trainer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1ea.</td>
<td>Set 3' Roller Beds- Entrance and Exit (6040DV Only)</td>
<td></td>
<td>$1,200</td>
</tr>
<tr>
<td>Installation and Training – 5333</td>
<td></td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>Installation and Training – 6040 Dual View</td>
<td></td>
<td>$1,250</td>
<td></td>
</tr>
</tbody>
</table>
Service Warranty Contract Extension -

3rd Yr  4th Yr

5333- $2,300  $2,600
6040DV- $5,000  $6,500

Terms & Conditions

Freight – Ex Works - $1,325, (5333 & 6040DV including roller beds)  Subtotal  $60,475
Net 30 Days
Delivery- 3-4 Weeks ARO
Warranty- 24 Months Parts, Labor and Travel
Sales Tax- NO SALES TAX Applicable, If ‘exemption certificate’ available, please provide.

State of New Mexico Special Pricing Agreement/Contract

Vendor # 000010386  Autoclear LLC

GSA Contract# GS-07F-184GA

Awarded Vendor: 000010386
Autoclear LLC
2 Gardner Road
Fairfield, NJ 07004
Telephone No.: 201-452-0849
Gener@autoclear.com

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies
allowed by law.

Invoice:
As Requested

Price Agreement Number: 80-000-17-00016
Price Agreement Amendment No.: One
Term: December 7, 2017 thru August 31, 2022
Procurement Specialist: Sandra Luian
Telephone No.: (505) 827-0242
Email: sandra.luia@state.nm.us

Title: X-Ray Scanners

*autoNarcAlert- Assists the operator in the detection of bulk narcotics. These include marijuana, cocaine, heroin, methamphetamine, and fentanyl. By enabling the autoNarcAlert feature, three new categories are added to autoMatAlert: marijuana, narcotics high-z (e.g. powder cocaine), and narcotics low-z (e.g. rock cocaine, fentanyl). Narcotics are circled with a green ellipse / box.
<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item Number</th>
<th>Description</th>
<th>Unit Price</th>
<th>Ext Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>HIPEPLUS/PZ-0989</td>
<td>HIPEPLUS/PZ Metal Detector w/SS101 panel, 820mm. HIPEPLUS/PZ Metal Detector w/SS101 panel, 820mm. HI-PE PLUS Walk-Through Metal Detector, panel version, complete with dual-beam photocells transit counter, four multi zones display bars programmable as pacing lights and/or 60 localization zones with left and right indication. Met-Identity technology, Random Alarm capability, low voltage DC power, Chip-Card programming, One-Touch automatic self-installation, Bluetooth and RS-232 communication, anti-tamper on/off switch. ADA Compliant passage width.</td>
<td>$2,600.10</td>
<td>$5,200.20</td>
</tr>
</tbody>
</table>

Net 30 Payment Terms
Applicable State and Local Taxes Apply
Includes 2 Years Parts and Shop Labor Warranty
Shipping/Freight is Estimated Pre-Pay & Add (Standard Ground)

Subtotal                   $5,200.20  
Freight                   $325.00 
Sales Tax                    $0.00 
Trade Discount               $0.00 
Total                        $5,525.20 

All Amounts are in U.S. Dollars
RESOLUTION RATIFYING COUNTY MANAGER’S SIGNATURE ON THE ESCROW RELEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY AND PHC-LAS CRUCES, INC. AND RELATED DOCUMENTS AND GRANTING COUNTY MANAGER AUTHORITY TO SIGN ANY OTHER NECESSARY DOCUMENTS RELATED TO THE RELEASE OF ESCROW FUNDS

SUMMARY OF ITEM TO BE CONSIDERED

On June 1, 2004, PHC-Las Cruces, Inc. (“PHC”) leased certain hospital facilities from the City of Las Cruces and Doña Ana County and purchased certain property from Memorial Medical Center, Inc. As part of the transaction, the parties entered into a Forbearance Agreement whereby $8,000,000 would be held in escrow to cover any potential unfunded pension liabilities of Memorial Medical Center, Inc. Pursuant to the Forbearance Agreement the funds were to be released from escrow to the City and County if no litigation was brought against PHC within the applicable statute of limitations. No litigation was commenced and an Escrow Release Agreement was executed by the parties. The bank holding the escrow funds is now requesting verification that the parties signing the escrow agreement had the authority of their respective governing bodies to sign the agreement. This resolution will ratify that the County Manager possessed such authority and will grant the express authority to sign any other documents necessary to complete the release of the escrow funds.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Proposed Resolution
Escrow Release Agreement (Exhibit “A”)
Escrow Release and Wiring Instructions (Exhibit “B”)

SUMMARY OF FINANCIAL IMPACT

Doña Ana County will receive $4,000,000

ADMINISTRATIVE REVIEW AND APPROVAL

[Stamps and signatures indicating approval]

DOCUMENT CONTROL

Original/s for signature?: □ Yes □ No For Recording?: □ Yes □ No

Return original/s to: Name: ___________________ Dept.: Legal

Send copy of recorded original/s (resolution and ordinances only) to: Name: N/A Dept.: N/A

Deadline for return of document/s?: □ Yes, return by: □ No
DOÑA ANA COUNTY
RESOLUTION NO. 2019-_____

RESOLUTION RATIFYING COUNTY MANAGER’S SIGNATURE ON THE ESCROW RELEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES, DOÑA ANA COUNTY AND PHC-LAS CRUCES, INC. AND RELATED DOCUMENTS AND GRANTING COUNTY MANAGER AUTHORITY TO SIGN ANY OTHER NECESSARY DOCUMENTS RELATED TO THE RELEASE OF ESCROW FUNDS

WHEREAS, On June 1, 2004, PHC-Las Cruces, Inc. ("PHC") leased certain hospital facilities from the City of Las Cruces ("City") and Doña Ana County ("County") and purchased certain personal property from Memorial Medical Center, Inc. ("MMCI"), the prior operator of the hospital; and

WHEREAS, as part of lease and purchase agreement certain monies were placed into escrow, known as the Representation and Warranties Escrow, to protect against claims arising from allegations other than alleged medical malpractice; and

WHEREAS, in 2009 it was determined that the Retirement Plan for Employees for MMCI employees was underfunded and as a result the plan was taken over by the Pension Benefit Guaranty Corporation ("PBGC"); and

WHEREAS, per the original terms of the lease agreement, the funds held in the Representation and Warranties Escrow were scheduled to be released on June 1, 2011, subject to any outstanding claims; and

WHEREAS, on April 27, 2011, the parties entered into a Forbearance Agreement whereby the funds held in the Representation and Warranties Escrow, with the exception of $8,000,000, would be released, with that $8,000,000 being held to cover any claims against PHC related to MMCI’s unfunded pension liabilities; and
WHEREAS, the remaining $8,000,000 was to continue to be held in escrow until the statute of limitations expired for the PBGC to commence litigation related to MMCI’s pension liabilities; and

WHEREAS, PHC has determined that it is likely that the statute of limitations has run with respect to any lawsuit by the PBGC and that the remaining money held in the Representation and Warranties Escrow should be released; and

WHEREAS, on or about December 21, 2018, County Manager Fernando R. Macias, signed an Escrow Release Agreement whereby the funds remaining in the Representation and Warranties Escrow fund would be released to the City and County, a copy of which is attached as Exhibit “A”; and

WHEREAS, County Manager Fernando R. Macias signed Escrow and Wiring Instructions setting how the funds from the Representation and Warranties Escrow would be distributed, a copy of which is attached as Exhibit “B”; and

WHEREAS, on March 1, 2019, Doña Ana County was advised that the bank holding the escrow funds was requesting documentation that County Manager Fernando Macias has signature authority to sign the Escrow Release Agreement on behalf of Doña Ana County.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Doña Ana County hereby ratifies the signature of County Manager Fernando Macias on the Escrow Release Agreement entered into on December 21, 2018 (Exhibit “A”) and on the Escrow Release and Wiring Instructions (Exhibit “B”); and

BE IT FURTHER RESOLVED, that the Board of County Commissioners of Doña Ana County hereby delegates signature authority to County Manager Fernando R. Macias to sign any other documents necessary to effect the release of the funds being held in the Representation and Warranties Escrow.
RESOLVED this 12th day of March, 2019.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

<table>
<thead>
<tr>
<th>Name</th>
<th>For/Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isabella A. Solis, District 4, Chairwoman</td>
<td>For/Against</td>
</tr>
<tr>
<td>Lynn J. Ellins, District 1</td>
<td>For/Against</td>
</tr>
<tr>
<td>Ramon S. Gonzalez, District 2</td>
<td>For/Against</td>
</tr>
<tr>
<td>Shannon Reynolds, District 3</td>
<td>For/Against</td>
</tr>
<tr>
<td>(Vacant), District 5,</td>
<td>For/Against</td>
</tr>
</tbody>
</table>

ATTEST:

Amanda López Askin, Ph.D.
County Clerk
ESCROW RELEASE AGREEMENT

This Agreement, by and amongst the City of Las Cruces ("City"), Dona Ana County ("County"), and PHC-Las Cruces, Inc. ("PHC"), is entered into this 21st of December, 2018.

On June 1, 2004, PHC leased certain hospital facilities from City and County and purchased certain personal property of the prior operator of the hospital, Memorial Medical Center, Inc. ("MMCI") ("the Transactions"). As part of the Transactions, the parties entered into an Escrow Agreement, dated June 1, 2004, whereby monies were placed in escrow to protect against certain claims arising from allegations other than medical malpractice allegations (referred to herein as the Representation and Warranty Escrow).

At the time the Transactions were entered into, MMCI maintained the Retirement Plan for Employees of Memorial Medical Center, Inc. (the "Plan") which was significantly underfunded. However, at the closing of the Transactions, certain proceeds were used to fully fund the Plan. Shortly after closing, the Plan was terminated, but the termination was not completed, in part, because of a delay in receiving a favorable determination letter from the Internal Revenue Service as to the Plan’s termination and by the time a favorable determination letter was received in 2009, the Plan again was substantially underfunded. By that time MMCI was in receivership and did not have monies to fully fund the Plan. As a result, in 2011, the Plan was taken over by the Pension Benefit Guaranty Corporation ("PBGC"), the federal entity that insures pension plan benefits and on June 5, 2012, the PBGC became the trustee of the Plan.

Under the original terms of the Transaction, the remaining Representation and Warranty Escrow was to be released to City and County on or about June 1, 2011 subject, however, to any outstanding claims. PHC maintained that the underfunded Plan was an outstanding claim and that the remaining funds in the Representation and Warranty Escrow account could not be released to City and County until the possibility that PHC could be liable for the Plan’s underfunding was foreclosed.

The parties entered into negotiations regarding the outstanding balance of the Representation and Warranty Escrow and on or about April 27, 2011, entered a Forbearance Agreement with respect to which a part of the funds held in escrow would be released to City and County and the remainder would be held in escrow to protect PHC and its affiliates against claims related to the underfunded Plan.

Pursuant to the Forbearance Agreement, the funds are to be released to City and County if, inter alia, "no litigation is brought against PHC-Las Cruces, Inc. (or any affiliate), seeking to recover any amount by which the Plan in [sic] underfunded within the applicable statute of limitations." PHC has determined that it is likely that the statute of limitation has run with respect to any lawsuit by the PBGC against it for the underfunding of Plan and that the funds can now be released to City and County pursuant to the Forbearance Agreement, subject to the terms and conditions set forth herein and PHC will notify the escrow agent on or about November 1, 2018, that the remaining funds may be released to City and County.

Subject to the terms and conditions of this Agreement, PHC, for itself, its successors and assigns, parents, subsidiaries and affiliates (collectively, the "PHC Parties") hereby releases and forever
discharges City, County and their successors and assigns, affiliates and their respective officers, agents, employees, or managers (collectively, the “City/County Parties”) from any and all duties, obligations, agreements, and liabilities of every kind that in any way arise from or are related to the Representations and Warranty Escrow Agreement and the Forbearance Agreement as they relate to the holding, management or investing of all funds held by the Escrow Agent on or after June 1, 2011, whether known or unknown.

Subject to the terms and conditions of this Agreement, City and County, each for itself and the City/County Parties, hereby release and forever discharge the PHC Parties, their successors and assigns, parents, subsidiaries and affiliates and their respective officers, agents, employees, owners or managers from any and all duties, obligations, agreements, and liabilities of every kind that in any way arise from or are related to the Representations and Warranty Escrow Agreement and the Forbearance Agreement as they relate to the holding, management or investing of all funds held by the Escrow Agent on or after June 1, 2011, whether known or unknown.

The parties agree that the releases herein made are effective without regard to the legal nature of the claim alleged and without regard to whether any such claim is based upon tort, equity, implied or express contract, or any federal, state or local law, statute or regulation or any claim for attorneys’ fees.

This Agreement shall apply solely to the holding, management and investing of funds pursuant to the Representations and Warranty and the Forbearance Agreement and does not apply to any claim nor release any claim of the parties with respect to the Transactions or the Plan.

PHC, City and County each agree to take any and all reasonable additional actions and to execute, acknowledge and deliver any and all documents, which the other party hereto may reasonably request in order to affect the intent and purposes of this Escrow Release Agreement.

This Escrow Release Agreement is for the sole and exclusive benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein is intended or shall be construed to confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights, remedies or claims under, or by any reason of, this Escrow Release Agreement or any term, covenant or condition hereof.

This Escrow Release Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other parties. A facsimile copy of a signature of a party to this Escrow Release Agreement or any such counterpart shall be fully effective as if an original signature.

[Signatures follow on next page.]
IN WITNESS WHEREOF, the Parties have affixed their signatures and seals as of the date first above written.

CITY OF LAS CRUCES

By Sturas C. Ed, City Manager

DONA ANA COUNTY

By Fernando Macias, County Manager

PHC-LAS CRUCES, INC.

By ______________, President
IN WITNESS WHEREOF, the Parties have affixed their signatures and seals as of the date first above written.

CITY OF LAS CRUCES

By ____________, City Manager

DONA ANA COUNTY

By ____________, County Manager

PHC-LAS CRUCES, INC.

By ____________, President

-3-
Dear Jonah Fecteau:

This letter agreement ("Escrow Release and Wiring Instructions") sets forth the understanding and agreement of the City of Las Cruces, New Mexico ("City") and Dona Ana County, New Mexico ("County") and provides wiring instructions to PHC-Las Cruces, Inc. ("PHC") as to the disposition of certain monies held in escrow pursuant to an Escrow Agreement, dated June 1, 2004, as modified by a Forbearance Agreement, dated on or about April 27, 2011 and an Escrow Release Agreement, dated on or about __________________, 2019.

The City and County agree that the Funds are to be released to the City and County by wire transfer as follows:

(1) Fifty Percent (50%) of the Funds are to released to the City by wire transfer as follows:

<table>
<thead>
<tr>
<th>City of Las Cruces Depository</th>
<th>US Bank NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>SWIFT Code:</td>
<td>USBKUS44IMT</td>
</tr>
<tr>
<td>ABA Routing Number:</td>
<td>107002312</td>
</tr>
<tr>
<td>Account Number:</td>
<td>156402212021</td>
</tr>
<tr>
<td>Account Name:</td>
<td>City of Las Cruces Depository</td>
</tr>
</tbody>
</table>

(2) Fifty Percent (50%) of the Funds are to released to the County by wire transfer as follows:

| Account Number: | 736-2013760 (Checking) |
| ABA Routing Number: | 121-000-248 |
| SWIFT Code:       | WFBIUS6S |

Doña Ana County
DAC Treasurer
Main Account
845 Motel Blvd.
Las Cruces, New Mexico 88007

Wells Fargo Bank, N.A.
425 S. Telshor Blvd.
Las Cruces, New Mexico 88011

By this letter agreement, the City and County acknowledge and agree that the wire transfer of the Funds in accordance with this Escrow Release and Wiring Instructions, satisfies any and all
obligations of PHC and the PHC Parties, as defined in the Escrow Release Agreement, and their duties, obligations, agreements, and liabilities of every kind that in any way arise from or are related to the Escrow account or the Funds.

CITY OF LAS CRUCES

By Stuart Ed, City Manager

DONA ANA COUNTY

By Fernando Macias, County Manager
TITLE OF AGENDA ITEM TO BE CONSIDERED

PUBLICATION OF TITLE AND GENERAL SUMMARY OF NOTICE TO HOLD A
PUBLIC HEARING TO CONSIDER AND ADOPT AN ORDINANCE APPROVING THE
ADMIRAL CABLE COMPANY LOCAL DEVELOPMENT ACT ("LEDA") PROJECT
PROPOSAL, THE PROJECT PARTICIPATION AGREEMENT, THE
INTERGOVERNMENTAL AGREEMENT AND THE SECURITY AGREEMENT

SUMMARY OF ITEM TO BE CONSIDERED
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

Admiral Cable has submitted an application pursuant to the County’s Economic Development Plan Procedures (DAC Codes, Chapter 166) seeking a grant of Economic Development Funds in an amount up to $3,920,000 for the purpose of constructing, establishing and operating a power cord manufacturing facility in the Santa Teresa/Border area of Doña Ana County. The project is slated to provide 342 new jobs by June 30, 2025. If approved, the grant funds will be provided by the State of New Mexico and shall be made available to the County to act as fiscal agent for the disbursement of the funds for the project and for generally overseeing project compliance. An ordinance approving the LEDA project is necessary. The public hearing would be held on April 9, 2019, delegating signature authority to the County Manager for the documents cited above and other required documents.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

1. Proposed Ordinance
2. Proposed Project Participation Agreement
3. Proposed Intergovernmental Agreement
4. Proposed Guaranty
5. Notice of Publication

SUMMARY OF FINANCIAL IMPACT

To be presented as part of the BOCC Presentation

ADMINISTRATIVE REVIEW AND APPROVAL

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>_</td>
<td></td>
</tr>
<tr>
<td>_</td>
<td>Finance</td>
</tr>
<tr>
<td>_</td>
<td>Purchasing</td>
</tr>
<tr>
<td>_</td>
<td>Planning</td>
</tr>
<tr>
<td>_</td>
<td>Legal</td>
</tr>
<tr>
<td>_</td>
<td>Human Resources</td>
</tr>
<tr>
<td>_</td>
<td>Other</td>
</tr>
<tr>
<td></td>
<td>County Manager/Agenda Review</td>
</tr>
<tr>
<td></td>
<td>Assistant County Manager</td>
</tr>
</tbody>
</table>

DOCUMENT CONTROL

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original/s for signature?: Yes No</td>
</tr>
<tr>
<td></td>
<td>For Recording?: Yes No</td>
</tr>
<tr>
<td></td>
<td>Return original/s to: Name: Chuck McMahon Dept: County Management</td>
</tr>
<tr>
<td></td>
<td>Send copy of recorded original/s (resolution and ordinances only) to: Name: N/A Dept: N/A</td>
</tr>
<tr>
<td></td>
<td>Deadline for return of document/s?: Yes, return by: 03/15/19</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
DOÑA ANA COUNTY ORDINANCE NO. 2019

AN ORDINANCE APPROVING THE ADMIRAL CABLE PROPOSAL FOR AN ECONOMIC DEVELOPMENT PROJECT

WHEREAS, the County of Doña Ana (the "County"), acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State"); and

WHEREAS, Article 9, Section 14 of the State constitution permits counties to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and

WHEREAS, pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), no public support for economic development may be provided until the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan; and

WHEREAS, on September 22, 2009, pursuant to Doña Ana County Ordinance No. 246-2009 (the "Economic Development Plan Ordinance") and later codified as Chapter 166 in the Doña Ana County Code, the County established the Doña Ana County Economic Development Plan (the "Plan") as the County's economic development plan as required by Section 5-10-6, NMSA 1978; now codified as Chapter 166 of the Code of Doña Ana County; and

WHEREAS, as provided in the Economic Development Plan Ordinance, the County considered an application from Admiral Cable which proposed that the County serve as the local government conduit for an appropriation up to $3,920,000 from the Legislature of the State of New Mexico (the "LEDA Funds") in order to construct, establish, construct, and operate a power cord manufacturing facility at 4701 Avenida Divisadero, in the Santa Teresa Intermodal Industrial Park in Doña Ana County, NM; and

WHEREAS, the County has determined that Admiral Cable is a "qualifying entity", and the Project is an "economic development project" as those terms are defined by the Act;

NOW, THEREFORE, BE IT ORDERED BY THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Short Title.
This ordinance may be cited as the "Admiral Cable Economic Development Project Ordinance."

Section 2. Purpose.
The Economic Development Project Ordinance is adopted to approve the Project and the above-identified agreements related to the Project.
Section 3. The Project.
The County hereby approves Admiral Cable as a qualifying entity and the Project as an economic development project under the Act and Section 5 of the Economic Development Plan Ordinance. This approval is conditioned upon those matters set forth in the Project Participation Agreement to be entered into by the County and Admiral Cable, and all applicable local, state and federal laws.

Section 4. Project Revenue Fund.
The Project Revenue Fund (the “Fund”) is hereby established pursuant to the Economic Development Plan Ordinance. All revenue related in any way to the Project shall be deposited into the Fund and any such revenue deposited into the Fund shall be expended only for the Project and upon approval from the New Mexico Economic Development Department and the County. Any unexpended and encumbered balances in the Fund shall be transferred to the New Mexico Economic Development Department upon termination of the Project as set forth in Section 6, herein.

Section 5. Project Agreements.
The County hereby authorizes the County Manager to enter into a Project Participation Agreement, an Intergovernmental Agreement and a Security Agreement that substantially conforms to the forms attached to this Ordinance. Those said Agreements shall be incorporated into this Ordinance by reference and made a part of this Ordinance.

Section 6. Termination.
Termination of the Project that is the subject of this Ordinance shall be by a subsequent ordinance. Any termination ordinance shall provide for termination of the above-referenced Agreements and shall provide for satisfying the existing rights of the parties thereunder.

Section 7. Ratification.
The County hereby ratifies and accepts all actions consistent with this Ordinance that the County or its agents may have taken in furtherance of the Project.

Section 8. Severability.
If any section, paragraph, sentence, clause, word, or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

Section 9. Effective Date.
This ordinance shall become effective thirty calendar (30) days after it is approved by the Board of County Commissioners and recorded in the office of the Doña Ana County Clerk, as provided in Section 4-37-9, NMSA 1978.
ADOPTED this _____ day of ______________________, 2019.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

<table>
<thead>
<tr>
<th>Name</th>
<th>District</th>
<th>For/Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isabella A. Solis, Vice Chairwoman</td>
<td>District 4</td>
<td>For/Against</td>
</tr>
<tr>
<td>Lynn J. Ellins, District 1</td>
<td></td>
<td>For/Against</td>
</tr>
<tr>
<td>Ramon S. Gonzalez, District 2</td>
<td></td>
<td>For/Against</td>
</tr>
<tr>
<td>Shannon Reynolds, District 3</td>
<td></td>
<td>For/Against</td>
</tr>
<tr>
<td>Vacant District 5</td>
<td></td>
<td>For/Against</td>
</tr>
</tbody>
</table>

ATTEST:

_________________________
Amanda López Askin, Ph.D.
County Clerk
PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on __________, 2019 by and between DOÑA ANA COUNTY, NEW MEXICO (the "County"), a political subdivision of the State of New Mexico (the "State"), and ADMIRAL CABLE (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.

B. Pursuant to Doña Ana County Ordinance No. 246-2009 (the "Economic Development Plan Ordinance"), on September 22, 2009, the County established the Doña Ana County Economic Development Plan (the "Plan") as the County's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Economic Development Plan Ordinance, the County considered an application from the Company, which proposed that the County serve as local government conduit for an appropriation of up to $3,920,000 from the Legislature of the State of New Mexico (the "State Contribution") to go toward the Company's development of an power cord manufacturing facility in the Santa Teresa Intermodal Park in Doña Ana County, New Mexico (the "Project"). The company will establish operations at the facility and will employ 342 full-time persons by June 30, 2025.

D. The County has adopted Ordinance No. ____-2019 ("Project LEDA Ordinance") finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.
1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. **Substantive Contribution from the Company.**
   a. **Facility.** The Company will establish manufacturing and business operations at 4701 Avenida Divisadero in the Santa Teresa Intermodal Park in Doña Ana County, New Mexico (the "Facility").
   
   b. **Investment.** The Company will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately $50,000,000 by June 30, 2024 (the "Project Contribution"), provided, however, failure to meet this level of Project Contribution will not constitute a breach of this Agreement.
   
   c. **Job Creation.** The Company will directly employ a target of 342 full-time employees at the facility by June 30, 2025 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full-time employees do not include agency, sub-contracted, temporary employees or independent contractors. While failure to meet certain Minimum Job Numbers may result in a Performance Clawback as provided in Section 10b, below, the Company’s failure to meet the Job Target will not constitute a breach of this Agreement.
   
   d. **Schedule.** A preliminary Project schedule is as follows, but failure to meet these milestones will not constitute a breach of this Agreement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spring 2019</td>
<td>Initiate facility construction</td>
</tr>
<tr>
<td>Fall 2019</td>
<td>Initiate production hiring</td>
</tr>
<tr>
<td>Spring 2020</td>
<td>Project in full operation</td>
</tr>
<tr>
<td>Summer 2021</td>
<td>Initiate Phase 2 expansion</td>
</tr>
<tr>
<td>Summer 2023</td>
<td>Initiate Phase 3 expansion</td>
</tr>
</tbody>
</table>

   e. **Sustainability.** Although the Company intends to have a long-term presence in the County, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until June 30, 2026.
3. **The State Contribution**
   
a. The County anticipates that the State Contribution will be delivered by the State to the County for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the County, after which time the County will request transfer of the State Contribution. Upon receipt, the County will place the State Contribution into a separate account established in connection with the Project, as required by law. The County will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the County and the State. The County will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the County. For purposes of this Agreement, LEDA Eligible Expenditures shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

b. The State Contribution is composed of up to $3,920,000 which includes a base LEDA award of $2,000,000 and additional awards of $1,000,000 tied to Phase 1 of Project expansion and $920,000 tied to maintaining employment benchmarks (yet payable and reimbursable against eligible expenditures). The State Contribution will be disbursed to the Company in accordance with the provisions of this Agreement for such purposes as set forth in Section 5-10-3D NMSA 1978.

4. **The County Contribution.**
   
a. The County will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The County will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State Contribution. As required by the LEDA Ordinance and the Act, the County will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the County for reimbursement of LEDA Eligible Expenditures.

5. **Disbursement of State Contribution**
   
a. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in four (4) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) after such date as the Company hires
any employees at the Facility, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

<table>
<thead>
<tr>
<th>Amount of State Contribution Available for Disbursement</th>
<th>Disbursement Performance Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,500,000</td>
<td>Initiate construction activity on the Project site, receive Certificate of Registration from the New Mexico Secretary of State and incur LEDA Eligible Expenses.</td>
</tr>
<tr>
<td>$500,000</td>
<td>Employ at least 50 people and incur LEDA Eligible Expenses prior to June 30, 2020.</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>Maintain a minimum employment level of 100 or more (per quarterly Wage and Employment report submitted to State of NM) for six (6) consecutive months and incur LEDA eligible expenses.</td>
</tr>
<tr>
<td>$920,000</td>
<td>Maintain a minimum employment level of 308 or more (per quarterly Wage and Employment report submitted to State of NM) for six (6) consecutive months and incur LEDA eligible expenses.</td>
</tr>
</tbody>
</table>

Note: Job creation attainment shall be measured in line with actual jobs created pursuant to section 10-b (not target jobs).

The Company has budgeted approximately $19,000,000 for its construction expenditures. The Company shall inform the contracted construction companies to use the correct New Mexico Taxation and Revenue Department Location Code of 07-007, Doña Ana County, for Gross Receipts Tax filing.

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the County a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) after such date as the Company hires any employees at the Facility, documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than $50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution then available to the Company at any time. The County may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.
7. **Review.** County will deliver Disbursement Request for review by the New Mexico Economic Development Department ("EDD") to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 days of receipt of the Disbursement Request by the EDD from the County. The County will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.

8. **No Offset of County costs.** The County may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution, Company shall furnish the County with a Letter of Credit (a form of which is attached hereto as Attachment 1), or some alternative form of security such as a first position mortgage lien, surety bond, or UCC receivables lien in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $3,920,000. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made. Company may utilize multiple forms of approved Security to fulfill the obligation. No State Contribution will be transferred to the County, and no Disbursement Requests shall be accepted by the County, until Security in the amount of the State Contribution is accepted.

   a. The County may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.

   b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on December 31, 2026, unless earlier released in accordance with this Agreement.

   c. If the State reduces the amount of LEDA Funds that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds actually received by the Company.

10. **Clawbacks.**
    Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions set forth herein.
a. **Facility Closure Clawback.** If the Company ceases operations in the County on or before June 30, 2026 the Company will repay to the County all LEDA Funds that the Company actually received from the County as of that date (the “Facility Closure Clawback”) and the County shall have the right to execute reimbursement from the Security, but only after thirty (30) days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 days or more or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the County within 10 days.

b. **Performance Clawback.** It is the Company’s intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned “Cumulative Fulltime Target Job Number” on the Job Measurement Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned “Minimum Job Number” in the table below on each of the specified Job Measurement Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the County which will be applied in the percentage set forth in the table below:

<table>
<thead>
<tr>
<th>Job Measurement Date</th>
<th>Cumulative Fulltime Target Job Number</th>
<th>Minimum Job Number</th>
<th>Clawback Penalty if Minimum Job Number not met</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30, 2020</td>
<td>1</td>
<td>1</td>
<td>100% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2021</td>
<td>100</td>
<td>85</td>
<td>100% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2022</td>
<td>100</td>
<td>90</td>
<td>100% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2023</td>
<td>265</td>
<td>225</td>
<td>100% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2024</td>
<td>265</td>
<td>239</td>
<td>75% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2025</td>
<td>342</td>
<td>291</td>
<td>50% of Clawback Penalty</td>
</tr>
<tr>
<td>June 30, 2026</td>
<td>342</td>
<td>308</td>
<td>25% of Clawback Penalty</td>
</tr>
</tbody>
</table>

For the purposes of this Section:

The “Clawback Penalty” is a penalty that the Company will be required to pay the County upon the Company’s failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period.
The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "Percentage Hiring Shortfall" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 2 hereto for examples of Clawback Calculations.

"Cure Period" is the period of 180 days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the County a Clawback Penalty determined in accordance with the table set forth above.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the County. The Company may request specific modifications to the job creation schedule in writing within ten days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the County and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

c. Job Reporting. The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD (a sample job report process is attached hereto as Attachment 3). The State will provide copies of all such reports to the County. The County or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the County and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement.
and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up to date quarterly job reporting as set forth herein.

d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. Fees. Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

12. Annual Performance Review. To ensure the prudent use of the taxpayer’s funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by County or EDD staff beginning on June 30, 2020 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The County or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the County may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the County may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the County terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the County will not have a right to clawback any of the payments already made to the Company.

13. Termination. This Agreement shall terminate at the close of business on December 31, 2026 or when otherwise terminated by ordinance.

14. Request for early release of security. If the Company achieves and then sustains the Minimum Job Number of 342 employees for six (6) consecutive months prior to June 30, 2025, the Company may request that the Security be released and, provided that the Company provides the information set forth in this Section 14, such request shall not unreasonably be denied. Said request shall be made to the County in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of
the Security may not be submitted prior to June 30, 2023. In the event that a request for early release of Security is granted, the job reporting and annual performance review requirements of this Agreement remain in full effect through the termination date stated above.

15. Liability. No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

16. Amendments. This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of Doña Ana County.

17. Governing Law. This Agreement shall be governed by the laws of the State of New Mexico.

17. Miscellaneous. This Agreement binds and inures to the benefit of the County and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the County and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

19. Notice. All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.
The initial notice addresses for the parties are as follows:

If to the County:

Doña Ana County with copy to the County Attorney
Attention: County Manager
845 North Motel Boulevard
Las Cruces, New Mexico 88007-8100
Tel: (575) 525-5802

If to the Company:

Admiral Cable
Attention: Martin Luan
2600 Airport Rd. #780
Santa Teresa, NM 88008

Effective Date: Approval by Doña Ana County and signatures by parties

Attachments:
1. Sample Security – Letter of Credit
2. Example of Clawback Calculations
3. Sample Affidavit for Job Reporting
DOÑA ANA COUNTY, NEW MEXICO
By the DOÑA ANA BOARD OF
COMMISSIONERS, a governmental
entity organized and existing
under the laws of the State of New
Mexico

By ____________________________

Name __________________________

Title __________________________

ADMIRAL CABLE

By ____________________________

Name: __________________________

Title: __________________________
Attachment 1
Sample Security – Letter of Credit

IRREVOCABLE LETTER OF CREDIT

Borrower: [Redacted]
Lender: Western Heritage Bank

Beneficiary: El Paso Electric
PO Box 982
El Paso, TX 79960

NO.: [Redacted]

EXPIRATION DATE. This letter of credit shall expire upon the close of business on [Redacted] and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an irrevocable Letter of Credit in favor of Beneficiary for a sum of One Hundred Fifty Thousand Dollars ($150,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary to cover advances made by Beneficiary to the Borrower. The Letter of Credit shall be in effect until the Expiration Date.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

1. All drafts must be drawn on the Lender and presented together with the following documents: a certified copy of the original Letter of Credit, a completed request for payment form signed by the Beneficiary, and any other documents required by the Lender.

2. The Letter of Credit is non-transferable except for:

   a. A transfer in its entirety but not in part by direct operation of law of the original Beneficiary to a third party.

   b. A transfer in its entirety or in part by operation of law of the original Beneficiary to the assignee of such rights.

3. The Letter of Credit is non-transferable for any reason whatsoever, except as expressly permitted by the Lender.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER Western Heritage Bank IRREVOCABLE LETTER OF CREDIT NO..."

EXPIRATION DATE. This Letter of Credit shall expire upon the close of business on [Redacted] and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico, without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce. ICC Publication No. 600.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date.
Attachment 2
Example of Clawback Calculations

Clawback Calculations
Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed) * (% clawback)
Job Creation % Shortfall = [1 - (actual jobs / cumulative hiring target)]

Example - 1 100
End of Year 4, inclusive of cure period

<table>
<thead>
<tr>
<th>Actual Employees (a)</th>
<th>220</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cumulative Hiring Target (b)</td>
<td>225</td>
</tr>
<tr>
<td>Job Creation % Shortfall = (c) = 1-(a/b)</td>
<td>2%</td>
</tr>
<tr>
<td>LEDA Dollars Distributed (d)</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>Clawback % (e)</td>
<td>100%</td>
</tr>
<tr>
<td>Penalty (f) = c<em>d</em>e</td>
<td>$66,666.67</td>
</tr>
</tbody>
</table>

Example - 2 75
End of Year 5, inclusive of cure period

<table>
<thead>
<tr>
<th>Actual Employees (a)</th>
<th>234</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cumulative Hiring Target (b)</td>
<td>239</td>
</tr>
<tr>
<td>Job Creation % Shortfall = (c) = 1-(a/b)</td>
<td>2%</td>
</tr>
<tr>
<td>LEDA Dollars Distributed (d)</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>Clawback % (e)</td>
<td>75%</td>
</tr>
<tr>
<td>Penalty (f) = c<em>d</em>e</td>
<td>$47,071.13</td>
</tr>
</tbody>
</table>

Example - 3 50
End of Year 6, inclusive of cure period

<table>
<thead>
<tr>
<th>Actual Employees (a)</th>
<th>286</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cumulative Hiring Target (b)</td>
<td>291</td>
</tr>
<tr>
<td>Job Creation % Shortfall = (c) = 1-(a/b)</td>
<td>2%</td>
</tr>
<tr>
<td>LEDA Dollars Distributed (d)</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>Clawback % (e)</td>
<td>50%</td>
</tr>
<tr>
<td>Penalty (f) = c<em>d</em>e</td>
<td>$25,773.20</td>
</tr>
</tbody>
</table>

Example - 4 25
End of Year 7, inclusive of cure period

<table>
<thead>
<tr>
<th>Actual Employees (a)</th>
<th>303</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cumulative Hiring Target (b)</td>
<td>308</td>
</tr>
<tr>
<td>Job Creation % Shortfall = (c) = 1-(a/b)</td>
<td>2%</td>
</tr>
<tr>
<td>LEDA Dollars Distributed (d)</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>Clawback % (e)</td>
<td>25%</td>
</tr>
<tr>
<td>Penalty (f) = c<em>d</em>e</td>
<td>$12,175.32</td>
</tr>
</tbody>
</table>
Please follow these steps to complete the LEDA job reporting:
To access the NMEDD LEDA portal go to: https://oonm.secuie.force.com/leda/

1: Login

Note: your username is your email address

2: Update

Portal Home

3: Access Application

Funding Application Details

Project Luz - Doña Ana County
4. Access Draft Report

Funding Application for: LEDA Application

Reports

<table>
<thead>
<tr>
<th>Report Id</th>
<th>Name</th>
<th>Reporting Quarter</th>
<th>Reporting Due Date</th>
<th>Status</th>
<th>Submit Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>APP-01 (57)</td>
<td>LEDA Job Report</td>
<td>Q4: 2018</td>
<td>7/31/2018</td>
<td>Submitted</td>
<td>10/29/2018 1:44 PM</td>
<td></td>
</tr>
</tbody>
</table>

4. Find current Draft Report and click green edit icon

Funding Summaries

<table>
<thead>
<tr>
<th>Funding Summary Name</th>
<th>Activity Type</th>
<th>Total Transactions Amount</th>
<th>Award Amount Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>APP-01 Summary</td>
<td></td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Funding Application Details

5: Complete LEDA job reporting

Report for: Triple Mesa LLC

Overview

LEDA Project Compliance Jobs Reporting Update

https://www.youtube.com/watch?v=htF16WEl6M
Please review the "How To" video which explains the LEDA jobs reporting process, including:

1. Submitting your job data at the Department of Workforce Solutions website
2. Capturing the screenshot of your Department of Workforce Solutions job data submission
3. Entering the job data into the LEDA Jobs Reporting Portal
4. Uploading the screenshot and the affirmation document to our job reporting form

*The affirmation document is found under the Attachments section of the LEDA Jobs Reporting Portal

5. Fill out the report by using the next button

6. Submit the report to the LEDA team
Note: The "Submit Report Button will only become available when all questions are answered and all documents have been uploaded.

6: Submit report after all questions are answered.
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT
AND DOÑA ANA COUNTY

This Intergovernmental Agreement ("Agreement") is entered into as of the date of
the last signature affixed below by and between the New Mexico Economic
Development Department ("EDD") and Doña Ana County (the "County"), a
political subdivision of the State of New Mexico, and collectively referred to as
"the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds
to the Economic Development Department for economic development projects
statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA
1978 §5-10-1 through §5-10-13 (2007) ("LEDA"), is to provide "public support
for economic development to foster, promote and enhance local economic
development efforts"; and

WHEREAS, the County has adopted LEDA by Ordinance No. 2462009, which established the Doña Ana County Economic Development Plan
that promotes economic development within the County; and

WHEREAS, Admiral Cable (hereinafter "Qualifying Entity") has entered into
a Local Economic Development Project Participation Agreement (hereinafter
"PPA") with the County. A copy of the County's Ordinance and PPA are attached
hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will
construct and occupy the industrial facility at 4701 Avenida Divisadero in the Santa
Teresa Intermodal Park in the County (the "Project") and is expected to employ
342 full-time persons by June 30, 2025; and

Admiral Cable - Dona Ana County
NM EDD FY19 LEDA

2/19/2019
WHEREAS, EDD and the County desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:
The purpose of this Agreement is to define the responsibilities of the County and EDD for the oversight and administration of up to $3,920,000 of the Appropriation for the Project. It is the intent of the parties that the County will receive an amount up to three million nine hundred and twenty thousand dollars ($3,920,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the County as the fiscal agent for EDD in accordance with the procedures the County will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the County as a result of implementation of the Project will be used by the County for economic development purposes only.

SECTION 2. SCOPE OF WORK:
The County will act as fiscal agent for up to $3,920,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer up to $3,920,000 to the County for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ 342 full-time employees at the facility by June 30, 2025.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the County agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the County to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the County the monies owned as
provided for by the PPA then such violation will require that the County foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies recovered by the County as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within thirty (30) business days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the County contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the “Security”).

SECTION 3. DOÑA ANA COUNTY RESPONSIBILITIES:

The County shall:

A. Pay the costs and expenses incurred for the Project from the Appropriation;
B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the County as the result of enforcing the provisions of the PPA shall be returned to EDD;
C. The County shall notify EDD in writing of any default by the Qualifying Entity within 15 business days of learning of the event of default;
D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
E. Distribute the funds transferred to the County by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;
F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the County Commission accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the County and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;
G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and
H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. COUNTY CERTIFICATIONS:
As Fiscal Agent, the County hereby assures and certifies that:
A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;
B. It has the legal authority to receive and expend the Appropriation;
C. It will enforce the provisions of Ordinance No. 246-2009 and the County's Economic Development Plan;
D. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;
E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation County receives from the Qualifying Entity;
F. It has entered into a PPA with the Qualifying Entity and has obtained all financial documentation necessary to protect the County's and State's investments in the Project;
G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;
H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;
I. No member, officer or employee of the County or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The County shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the “anti-donation clause.”

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

A. Transfer to the County for costs and expenses incurred for the Project an amount not to exceed one million five thousand dollars ($1,005,000). The funds shall be used only for the purpose stated in this Agreement;

B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the County each quarter until December 31, 2025.

C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

D. Reimburse the County for any costs associated with litigation to enforce the terms of the Security.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on December 31, 2026 or when all of the obligations of the PPA have been fulfilled.
SECTION 7. LIABILITY:
No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The County and EDD may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS
A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.
B. The County shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.
C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by County, County shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:
The County shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.
SECTION 10. REPORTS:
The Qualifying Entity shall submit quarterly reports regarding employment to the County during the life of this Agreement and the County shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with EDD. The County shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:
Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:
Juan Torres
Finance Development Team Leader
NM Economic Development Department
PO Box 20003
Santa Fe, New Mexico 87504

To the County:
Economic Development Manager
Doña Ana County
845 N. Motel Blvd
Las Cruces, New Mexico 88007

SECTION 12. AMENDMENTS:
This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW:
This Agreement shall be governed by the laws of the State of New Mexico.
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

DOÑA ANA COUNTY, NEW MEXICO

By: __________________________
Name: ______________________
Title: ________________________
Date: ________________________

APPROVED AS TO FORM

By: __________________________
Doña Ana County Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: __________________________
Alicia Keyes
Cabinet Secretary Designate
Date: ________________________

APPROVED AS TO FORM

By: __________________________
David Mathews
General Counsel
NOTICE OF PUBLIC HEARING

On March 12, 2019, the Board of County Commissioners of Doña Ana County directed that a public hearing be conducted at a scheduled regularly-held Commission meeting on April 9, 2019, at 9:00 a.m., on the question of whether to adopt the Ordinance Approving the Admiral Cable Company, Proposal for an Economic Development Project, as summarized below. The public hearing will be held at the Doña Ana County Government Center located at 845 N. Motel Blvd., Las Cruces, New Mexico. Should you require special accommodations as a result of a disability, please contact County ADA Coordinator at 525-5884 (voice), 525-5951 (TTY), or write to ADA Coordinator, 845 N. Motel Blvd., Las Cruces, New Mexico 88007.

The official title of the proposed ordinance is: “Admiral Cable Company, Economic Development Project Ordinance.”

General Summary: The purpose of this Ordinance is to approve the application of Admiral Cable Company, submitted to the County, pursuant to the Local Economic Development Act (Sections 5-10-1 through 5-10-13, NMSA 1978) and the County’s Economic Development Plan. Admiral Cable Company is requesting from the State of New Mexico a $3,920,000.00 LEDA appropriation to assist in the construction and operation of a power cord manufacturing facility in the Santa Teresa Border Region of Doña Ana County. It is anticipated that the project will create 342 new jobs by June 30, 2025, and, thus, enhance economic development for the area. No County funds are requested. The County will act as the fiscal agent for the State in the disbursement of and administration of the appropriation and will generally monitor the Project to completion.

A copy of the proposed ordinance and Agreements are available for inspection at the Office of the County Clerk, Doña Ana County Government Center, 845 N. Motel Blvd, Las Cruces, New Mexico during regular business hours.

Publish: Las Cruces Sun News on ____________.
### TITLE OF AGENDA ITEM TO BE CONSIDERED

**FIFTH AMENDED AND RESTATITED JOINT POWERS AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND DOÑA ANA COUNTY PROVIDING FOR THE SOUTH CENTRAL SOLID WASTE AUTHORITY, SUBJECT TO APPROVAL BY THE SECRETARY OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION**

### SUMMARY OF ITEM TO BE CONSIDERED

The Director of the South Central Solid Waste Authority ("the Authority") has proposed to City and County staff that the Fourth Amended Joint Powers Agreement ("2018 JPA") dated August 7, 2018, be amended to address concerns raised by attorneys for the New Mexico Finance Authority. In order to process a pending loan agreement with the Finance Authority, its attorneys have requested changes to the 2018 JPA to provide greater assurance of repayment of debt should the Authority cease to exist because smaller solid waste authorities have lost members and have struggled to maintain financial viability. The Authority’s bond counsel has worked with the Finance Authority to simplify the original amendments sought by its attorneys. The revised amendments have been approved by the Amended and Revised Joint Powers Agreement ("Fifth Amended JPA"). The Authority Board recommended approval of the Fifth Amended JPA at its February 21, 2019 Board meeting in Board Resolution No. 2019-04. The City will consider it on April 1, 2019. If the County Commissioners and City Council approve the Fifth Amended JPA, it would not take effect until approved by the New Mexico Department of Finance and Administration as required by Section 11-1-3, NMSA 1978, of the Joint Powers Agreement Act.

### DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

1. The South Central Solid Waste Authority Resolution
2. The current Fourth Amended and Restated Joint Powers Agreement (red-lined version showing proposed amendments the fifth JPA)
3. The Proposed Fifth Amended and Restated Joint Powers Agreement for execution

### SUMMARY OF FINANCIAL IMPACT

Continued pledge of County environmental services GRT to existing and future revenue bond debt of the Authority.

### ADMINISTRATIVE REVIEW AND APPROVAL

- **Finance**
- **Legal**
- **Purchasing**
- **Human Resources**
- **Planning**
- **Other**

### DOCUMENT CONTROL

- Original/s for signature?: X Yes
- For Recording?: □ Yes □ No
- Return original/s to: Chuck McMahon, Assistant County Manager
- Send copy of recorded original/s (resolution and ordinances only) to: Name: N/A Dept.: N/A
- Deadline for return of document/s?: □ Yes, return by: □ No
A RESOLUTION RECOMMENDING APPROVAL OF THE FIFTH AMENDED AND RESTATED JOINT POWERS AGREEMENT TO ESTABLISH A REGIONAL SOLID WASTE AUTHORITY AND TO PROVIDE FOR FINANCING

This Agreement is entered into on this ____ day of ____________ 2019, between the CITY OF LAS CRUCES (the "City"), a New Mexico municipal corporation, and the COUNTY OF DOÑA ANA (the "County"), a New Mexico political subdivision.

BACKGROUND

A. Pursuant to Sections 3-48-1 through 3-48-7 NMSA 1978, the City has the power and authority to dispose of solid waste.

B. Pursuant to Sections 4-56-1 through 4-56-3 NMSA 1978, the County has the power and authority to dispose of solid waste.

C. In 1989, the City and the County determined it was in the best interests of their respective residents to jointly undertake to exercise their powers of solid waste disposal in their geographic region.

D. The New Mexico Joint Powers Agreements Act ("Act") authorizes two or more public agencies to jointly exercise by agreement any power common to the contracting parties.

E. The City and the County entered into a joint agreement in 1990, for the purpose of establishing a regional solid waste management master plan, including studies, as necessary, of specific sites for solid waste transfer and/or disposal.

F. The master plan identified and evaluated various forms of management structure available for a regional solid waste facility and made management recommendations to the parties. The parties accepted the master plan by joint resolution on October 13, 1992.

G. The parties at that time desired to institute, through statutory special procedures, a separate, single-purpose solid waste authority to assume responsibility for the management of regional solid waste disposal.

H. The parties recognized that implementation of the regional solid waste disposal plan required that certain obligations be made by the parties prior to the date when a separate entity should be able to assume regional solid waste disposal responsibility.

I. The parties thereafter adopted a Joint Powers Agreement ("JPA") in 1993 and created an interim solid waste board ("interim board") to manage and develop a regional solid waste landfill. The interim board located and evaluated potential sites for the regional solid waste landfill.
J. In May 1994, the parties jointly purchased a 640-acre tract on the west mesa known as the Corralitos tract for the regional landfill, and subsequently named the facility the "Corralitos Regional Landfill".

K. The interim board subsequently determined that it would be difficult to secure financing for the construction of the regional landfill without security or guaranty of payment and therefore each party adopted an environmental services gross receipts tax to provide financing security.

L. The City adopted the 1/16% Municipal Environmental Services Gross Receipts Tax and dedicated the tax revenues for the acquisition, construction, operation, and maintenance of solid waste and related facilities.

M. The County adopted the 1/8% County Environmental Services Gross Receipts Tax and dedicated the tax revenue for the acquisition, construction, operation and maintenance of solid waste and related facilities.

N. The interim board recommended that the parties amend their agreement so as to establish a regional solid waste authority and providing for financing of the regional landfill and related facilities, including purchasing the land and other assets of the parties necessarily acquired by them prior to the issuance of revenue bonds by the City.

O. The City and the County subsequently amended their JPA in 1994 and created the South Central Solid Waste Authority ("Authority") and which was subsequently approved by the New Mexico Department of Finance and Administration.

P. The City and the County subsequently amended the JPA in 2009 and expanded the Authority’s solid waste services to residents located within the unincorporated portions of the County and improved the manner in which such services were performed.

Q. In addition, under that 2009 Amended JPA, the City and the County began providing recycling services to all residents residing within the regional boundaries of the Authority.

R. On October 10, 2017, the County Commission enacted County Resolution No. 2017-91, which granted consent to the Authority to implement solid waste collection services for Dona Ana County residents within the unincorporated areas of the County.

S. The City and the County approved a Fourth Amended and Restated Joint Powers Agreement dated August 7, 2018. However, the New Mexico Finance Authority ("NMFA") has requested revisions to the Fourth Amended and Restated Joint Powers Agreement as a condition for approving a pending loan agreement for a landfill compactor and for future loan agreements with NMFA.

T. The Authority’s Board has recommended that the City and the County approve the revisions requested by NMFA. The requested revisions, which provide additional
AGREEMENT

1. PURPOSE

The purpose of this Agreement is for the Authority to continue providing and maintaining regional solid waste landfills and related facilities and regional solid waste management programs, including but not limited to:

A. Operating and maintaining regional solid waste landfills and related facilities within its boundaries, and owning and operating the 640-acre tract commonly known as the Corralitos Regional Landfill;

B. Offering and operating regional solid waste collection services within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body; and

C. Offering, implementing, and operating a regional recycling program within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body.

2. ESTABLISHMENT

The City and the County hereby reaffirm that the Authority shall exercise powers with respect to solid waste management common to both parties and shall do so in accordance with this Agreement.

3. BOUNDARIES

The geographical boundary of the Authority shall continue to be the City of Las Cruces and the unincorporated portions of the County of Doña Ana, and this Agreement is entered with the primary intent to serve the needs of the citizens within such area. However, nothing in this Agreement shall be construed as preventing the Authority from conducting business outside of such area, including owning property or operating other solid waste facilities or providing solid waste collection services, as approved by the Board as it deems necessary.

4. GOVERNING BODY

A. Board

i. The Authority shall be governed by its Board, which shall establish its own procedures and such acts so as to carry out the purposes of this Agreement.
B. Members
   i. The Board shall consist of eight (8) board members.
      1. There shall be three (3) voting members who shall be appointed from the City Council by the Mayor with the consent of the City Council.
      2. There shall be three (3) voting members who shall be appointed by the County Chairperson and with the consent of the County Commission.
      3. There shall be two (2) ex-officio members who shall be the City Manager and the County Manager, or their designees.

C. Term
   i. A member's term shall expire when his or her official term in office is completed or when the term of the appointing mayor or Chairperson is completed; however, the member shall continue to serve until a new member is appointed.
   ii. Members may be reappointed for more than one term.

D. Attendance
   i. Attendance is required at all Board meetings and a member shall be removed for failure to attend more than 25% of the regularly scheduled meetings in any twelve (12) month period.

E. Removal
   i. A member may be removed for any other reason by a majority vote of their respective City Council or County Commission if the appointing mayor or chairman is in the majority.

F. Voting/Quorum
   i. A majority vote of the quorum shall be required for the adoption of a resolution; however, a three-fourths (3/4) vote of all voting members shall be required for the adoption of an ordinance relating to revenue bonds.
   ii. A majority of the voting members shall constitute a quorum for the transaction of business.
G. Tie Votes

i. If the Board reaches a tie vote at any duly called meeting of the Board at which a quorum is present on any action item within the authority of the Board, as provided by this Agreement, then the matter may either be reconsidered by the Board and another vote taken or the matter may be tabled for a future date.

H. Meetings

i. Regular Meetings: The Board shall hold one regular meeting each quarter.

ii. Special Meetings: The Board Chair may call a special meeting as the need requires and based on Board availability.

iii. Notice of Meetings: All meetings of the Board shall be noticed and held in accordance with the New Mexico Open Meetings Act.

I. Minutes

i. The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to every member of the Board, including ex-officio members.

J. By-laws

i. The Board shall adopt such by-laws or amend rules or regulations for the conduct of its affairs as it deems necessary.

K. Director

i. The Board shall hire a Director on behalf of the Authority.

ii. The Director’s salary, retirement, compensation and bonuses, along with any and all employment-related benefits for, the Director will be included in the annual budget for the Authority and will be paid, or provided for, by the Authority.

iii. In the event that the Director is unable to fulfill his duties for a protracted period of time (being 30 or more continuous days), the Board shall select a designee to perform the duties of the Director on an interim basis.
5. **POWERS OF THE BOARD**

The Authority, through its Director, shall be the administering agency authorized to exercise all powers common to each of the parties with respect to solid waste facilities, and services, including but not limited to the following:

A. To make and enter into contracts;

B. To apply for and accept grants, loans, financial guarantees and other financial assistance from private and public, including state and federal, agencies, institutions and entities;

C. To make plans and conduct studies related to the operation, collection, management, storage, and disposal of solid waste and recyclables;

D. To acquire, construct, operate and maintain, repair, replace, expand and close Authority facilities and infrastructure;

E. To acquire and dispose of real property, vehicles, machinery, equipment, tools, and any other property reasonably related to its purpose;

F. To condemn property for public use;

G. To sue and be sued in its own name;

H. To incur debts subject to the limitations of this Agreement and to issue revenue bonds in accordance with Section 11-1-7, NMSA 1978 as amended subject to the limitations of this Agreement;

I. To set rates which are at least sufficient to pay all operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for revenue bonds issued pursuant to this Agreement, and all other costs necessarily incurred by the Authority;

J. To operate regional solid waste collection services within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

K. To operate a regional recycling program within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

L. To bill and collect fees based on usage and the rates set by the Authority and establish a procedure for the resolution of disputed fees, provided that such functions may be performed by the fiscal agent as further provided in this Agreement;

M. To determine eligibility of customers outside of the Authority’s boundaries;

N. To impose conditions on the use of the Authority’s facilities;
O. To suspend authorization to use the Authority's facilities, for nonpayment or failure to abide by the rules and regulations of the Authority;

P. To adopt resolutions and procedures necessary to carry out the purposes of this Agreement;

Q. To adopt an annual budget;

R. To obtain necessary public liability and property insurance coverage;

S. To use any legally delegable remedies provided under state statute, City ordinance, or County code for the enforcement of actions by and the collection of monies for Authority operations; and,

T. To engage in any other actions or activities reasonably related to the purpose of this Agreement.

6. DUTIES OF THE DIRECTOR

Subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits issued to the Authority, the duties of the Director shall include, but are not exclusively limited to the following:

A. The management and supervision of the operations of the Authority in accordance with the adopted annual budget of the Authority.

B. The compliance with all applicable laws, rules, and regulations, including the conditions imposed under the applicable permits issued to the Authority;

C. The negotiation, execution and delivery of agreements, contracts, instruments and other documents in furtherance of the operations of the Authority;

D. The hiring and terminating such personnel as may be required or appropriate to operate and maintain the Authority;

E. To procure and maintain new and existing permits from New Mexico Environment Department;

F. The continued compliance of the Authorities facilities with all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits and registrations;

G. To contract for the services of employees, consultants, and such other persons as it deems necessary including, but not limited to, contract operators for all or any portion of the Authority's solid waste facilities and hauling operations under such terms and conditions as may be established by the Board in the agreements relating to such contract operators; and

South Central Solid Waste Authority
Fifth Amended JPA
Page 7 of 12
H. To consult with and obtain the approval of the Board as necessary to fulfill the purpose of this Agreement.

7. FISCAL AGENT

The Authority shall have the power to serve as its own fiscal agent. However, the Authority shall also have the power to enter into a contract with any other public or private organization to provide fiscal agent services should the Authority so choose, subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations.

8. PURCHASE AND OWNERSHIP OF ASSETS

A. The parties owned a 640-acre regional landfill tract commonly known as the Corralitos Regional Landfill as joint tenants and have deeded their interest in the Corralitos property to the Authority.

B. The Authority may acquire and sell any real property and personal property as is reasonably necessary to implement this Agreement and to conduct its business. All such assets of the Authority, whether real or personal property, shall be owned in the name of the Authority.

9. FINANCING / REVENUE BONDS

A. The Authority shall have the power to issue bonds, to co-issue bonds with one or more governmental entities, and to act as the administering agency of such revenue bonds and to secure such bonds by irrevocable pledges of the net revenues derived from its operations.

B. The Authority shall also have the power to pledge its net revenues and to determine the priority of payment to any revenue bonds, to establish irrevocable liens on such net revenues for the payment of such revenue bonds and to make such covenants as are necessary or advisable with respect to such revenue bonds;

C. Additionally, the proceeds of the 1/16% Municipal Environmental Services Gross Receipts Tax of the City and the 1/8% County Environmental Services Gross Receipts Tax of the County may be pledged as additional security for such bond issuance with the consent of the appropriate governing body.

D. Any such revenue bonds shall be issued in accordance with the Act and other applicable New Mexico law.

E. Revenue bonds may be issued for the purpose of acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, solid waste facilities or any combination of the foregoing.
including payment of all costs incidental to the foregoing and the issuance of any revenue bonds.

F. The proceeds of such revenue bonds may be used to design and construct the landfill, transfer stations and related facilities, and to purchase real and personal property.

G. Rates established by the Authority for use of the Authority’s facilities and services, including the Corralitos Regional Landfill, shall be adequate to meet operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for issued revenue bonds issued pursuant to this Agreement and all other costs necessarily incurred by the Authority.

H. Any excess revenue shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

10. ANNUAL REPORT

Every year, on or before the anniversary date of this Agreement, the Authority shall prepare an audited complete financial report prepared by an independent certified public accountant on the operation on the landfill and related facilities to the parties.

11. NON-APPROPRIATION

The Authority is obligated to set rates which are at least sufficient to meet debt service coverage requirements for all revenue bonds issued pursuant to this Agreement and to pay: (i) all operation and maintenance expenses, (ii) financial and operational reserve funding, (iii) debt service payments due on all revenue bonds issued pursuant to this Agreement, and (iv) all other costs necessarily incurred by the Authority.

12. TERM

The term of the Agreement shall be perpetual.

13. TERMINATION OF AGREEMENT

A. The Agreement may be terminated only by the mutual consent of both parties and shall not be terminated so long as any revenue bonds or other obligations issued pursuant to this Agreement are outstanding or unpaid, including but not limited to any loan made now or in the future by the New Mexico Finance Authority to the Authority. Additionally, the Authority will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, the facilities and assets required for solid waste disposal services, or any part thereof, including any and all extensions and additions that may be made thereto, until Authority revenue bonds shall have been paid in full, except that the Authority may sell any portion of said facilities and assets which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient provision of solid waste disposal services, but in no manner nor to such extent as might
prejudice the security for the payment of said revenue bonds, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net revenues of the Authority.

B. If the Authority is mutually terminated when there is a successor public entity which will carry on the activities of the Authority and assume its obligations, all property, rights and assets of the Authority shall be transferred to the successor public entity. The County will secure the approval from the State Board of Finance if required for such transfer.

C. If the Authority is mutually terminated when there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, all property, rights and assets of the Authority shall be divided between the parties as equitably negotiated.

D. If the Authority is mutually terminated when there is a successor public agency which would undertake some of the functions of the Authority and assume some of its obligations, all property, rights and assets of the Authority shall be equitably allocated by the Board between the successor public entity and the parties. The County will secure the approval from the State Board of Finance if required for such allocation.

E. In the event that the Authority is mutually terminated under the circumstances falling within (C) or (D) above, all decisions of the Board with regard to the equitable determinations of those amounts to be transferred to the parties or any successor shall be final subject to the City’s or the County’s right to seek mediation if there is a dispute as to the Authority’s equitable determinations.

14. CONSEQUENCES FOR UNILATERAL WITHDRAWAL

A. If one party unilaterally withdraws from the Authority in violation of Section 13 while any loan made now or in the future by the New Mexico Finance Authority to the Authority is outstanding and unpaid: (i) the City and the County will pay the New Mexico Finance Authority in full for such loan; or (ii) the City or the County will assume such loan and all property, rights and assets of the Authority shall be transferred to the party assuming such loan and the assuming party shall assume all obligations and duties of the Authority hereunder, including the obligation to use net revenues of the Authority, or any successor, to pay all revenue bonds issued pursuant to this Agreement. The party unilaterally withdrawing shall have no claim to a division or partition of Authority assets.

B. The unilateral withdrawal of one party shall not affect such party’s pledge of environmental services gross receipts tax revenue as security for any outstanding revenue bonds issued by the City pursuant to the Agreement. The pledge of such tax revenue shall continue in full force and effect until there has been full payment or defeasance of the City’s revenue bonds issued pursuant to this Agreement and secured by such tax revenue.
C. The failure of either party to pay usage fees within 180 days of billing shall be considered a unilateral withdrawal.

15. HEADINGS

The headings of the various sections of this Agreement are inserted only for convenience or reference and are not intended nor shall they be construed to modify, define, limit or expand the intent of the parties.

16. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding between the parties.

17. AMENDMENTS

The parties acknowledge and agree that this Agreement may be amended in writing upon approval of the governing bodies of each party and that any such amendments shall not become effective until signed by the parties, provided that no such amendment shall materially adversely affect any revenue bonds then outstanding.

18. SEVERABILITY

This Agreement shall be construed in accordance with the laws of New Mexico. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and reasonable and be legal, valid and enforceable.

19. CONSTRUCTION

This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction against the party causing the Agreement to be written.

20. AUTHORITY

Each person and/or individual executing this Agreement on behalf of such party represents and warrants that they are duly authorized to execute and sign this Agreement.
21. EFFECTIVE DATE

This Agreement shall become effective upon execution by all parties and approval by the New Mexico Department of Finance and Administration.

PASSED AND APPROVED this 21st day of February 2019.

SOUTH CENTRAL SOLID WASTE AUTHORITY

MOVED BY: Isabella Solis
SECONDED BY: Kasandra Gandara

VOTE:
- Councilor Gabriel Vasquez: Aye
- Commissioner Isabella Solis: Aye
- Councilor Kasandra Gandara: Aye
- Commissioner Lynn Ellins: Aye
- Mayor Ken Miyagishima: Absent
- Commissioner Ramon Gonzalez: Absent
This Agreement is entered into on this _____day of _____________ 2019, between the CITY OF LAS CRUCES (the "City"), a New Mexico municipal corporation, and the COUNTY OF DOÑA ANA (the "County"), a New Mexico political subdivision.

BACKGROUND

A. Pursuant to Sections 3-48-1 through 3-48-7 NMSA 1978, the City has the power and authority to dispose of solid waste.

B. Pursuant to Sections 4-56-1 through 4-56-3 NMSA 1978, the County has the power and authority to dispose of solid waste.

C. In 1989, the City and the County determined it was in the best interests of their respective residents to jointly undertake to exercise their powers of solid waste disposal in their geographic region.

D. The New Mexico Joint Powers Agreements Act ("Act") authorizes two or more public agencies to jointly exercise by agreement any power common to the contracting parties.

E. The City and the County entered into a joint agreement in 1990, for the purpose of establishing a regional solid waste management master plan, including studies, as necessary, of specific sites for solid waste transfer and/or disposal.

F. The master plan identified and evaluated various forms of management structure available for a regional solid waste facility and made management recommendations to the parties. The parties accepted the master plan by joint resolution on October 13, 1992.

G. The parties at that time desired to institute, through statutory special procedures, a separate, single-purpose solid waste authority to assume responsibility for the management of regional solid waste disposal.

H. The parties recognized that implementation of the regional solid waste disposal plan required that certain obligations be made by the parties prior to the date when a separate entity should be able to assume regional solid waste disposal responsibility.

I. The parties thereafter adopted a Joint Powers Agreement ("JPA") in 1993 and created an interim solid waste board ("interim board") to manage and develop a regional solid waste landfill. The interim board located and evaluated potential sites for the regional solid waste landfill.

J. In May 1994, the parties jointly purchased a 640-acre tract on the west mesa known as the Corralitos tract for the regional landfill, and subsequently named the facility the "Corralitos Regional Landfill".

South Central Solid Waste Authority
FIFOURTH AMENDED AND RESTATED JOINT POWERS AGREEMENT
Page 1 of 14
Page 77 of 121
K. The interim board subsequently determined that it would be difficult to secure financing for the construction of the regional landfill without security or guaranty of payment and therefore each party adopted an environmental services gross receipts tax to provide financing security.

L. The City adopted the 1/16% Municipal Environmental Services Gross Receipts Tax and dedicated the tax revenues for the acquisition, construction, operation, and maintenance of solid waste and related facilities.

M. The County adopted the 1/8% County Environmental Services Gross Receipts Tax and dedicated the tax revenue for the acquisition, construction, operation and maintenance of solid waste and related facilities.

N. The interim board recommended that the parties amend their agreement so as to establish a regional solid waste authority and providing for financing of the regional landfill and related facilities, including purchasing the land and other assets of the parties necessarily acquired by them prior to the issuance of revenue bonds by the City.

O. The City and the County subsequently amended their JPA in 1994 and created the South Central Solid Waste Authority (“Authority”) and which was subsequently approved by the New Mexico Department of Finance and Administration.

P. The City and the County subsequently amended the JPA in 2009 and expanded the Authority’s solid waste services to residents located within the unincorporated portions of the County and improved the manner in which such services were performed.

Q. In addition, under that 2009 Amended JPA, the City and the County began providing recycling services to all residents residing within the regional boundaries of the Authority.

R. On October 10, 2017, the County Commission enacted County Resolution No. 2017-91, which granted consent to the Authority to implement solid waste collection services for Dona Ana County residents within the unincorporated areas of the County. As their JPA’s have previously been amended from the time to time to better serve the solid waste management needs of their communities, the City and the County have again determined that certain amendments and changes be made through the execution of this Fourth Amended and Restated Joint Powers Agreement, which supersedes and replaces all previous agreements and amendments and which shall be effective as of the date this Agreement is approved by both parties and by the New Mexico Department of Finance and Administration.

S. The City and the County approved a Fourth Amended and Restated Joint Powers Agreement dated August 7, 2018. However, the New Mexico Department of Finance and Administration (“DFA”)-Finance Authority (“NMFA”) has requested revisions to the Fourth Amended and Restated Joint Powers Agreement as a condition for approving a pending loan agreement for a landfill compactor and for future loan agreements with...
NMFA. On October 10, 2017, the County Commission enacted County Resolution No. 2017-91, which granted consent to the Authority to implement solid-waste collection services for Doña Ana County residents within the unincorporated areas of the County.

T. The Authority's Board has recommended that the City and the County approve the revisions requested by DFANMFA. The requested revisions, which provide additional protection to DFA-NMFA that loans made by it will be repaid, are acceptable to City and County staff.
AGREEMENT

1. PURPOSE

The purpose of this Agreement is for the Authority to continue providing and maintaining regional solid waste landfills and related facilities and regional solid waste management programs, including but not limited to:

A. Operating and maintaining regional solid waste landfills and related facilities within its boundaries, and owning and operating the 640-acre tract commonly known as the Corralitos Regional Landfill;

B. Offering and operating regional solid waste collection services within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body; and

C. Offering, implementing, and operating a regional recycling program within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body.

2. ESTABLISHMENT

The City and the County hereby reaffirm that the Authority shall exercise powers with respect to solid waste management common to both parties and shall do so in accordance with this Agreement.

3. BOUNDARIES

The geographical boundary of the Authority shall continue to be the City of Las Cruces and the unincorporated portions of the County of Doña Ana, and this Agreement is entered with the primary intent to serve the needs of the citizens within such area. However, nothing in this Agreement shall be construed as preventing the Authority from conducting business outside of such area, including owning property or operating other solid waste facilities or providing solid waste collection services, as approved by the Board as it deems necessary.

4. GOVERNING BODY

A. Board

   i. The Authority shall be governed by its Board, which shall establish its own procedures and such acts so as to carry out the purposes of this Agreement.
B. Members

i. The Board shall consist of eight (8) board members.

1. There shall be three (3) voting members who shall be appointed from the City Council by the Mayor with the consent of the City Council.

2. There shall be three (3) voting members who shall be appointed by the County Chairperson and with the consent of the County Commission.

3. There shall be two (2) ex-officio members who shall be the City Manager and the County Manager, or their designees.

C. Term

i. A member's term shall expire when his or her official term in office is completed or when the term of the appointing mayor or Chairperson is completed; however, the member shall continue to serve until a new member is appointed.

ii. Members may be reappointed for more than one term.

D. Attendance

i. Attendance is required at all Board meetings and a member shall be removed for failure to attend more than 25% of the regularly scheduled meetings in any twelve (12) month period.

E. Removal

i. A member may be removed for any other reason by a majority vote of their respective City Council or County Commission if the appointing mayor or chairman is in the majority.

F. Voting/Quorum

i. A majority vote of the quorum shall be required for the adoption of a resolution; however, a three-fourths (3/4) vote of all voting members shall be required for the adoption of an ordinance relating to revenue bonds.

ii. A majority of the voting members shall constitute a quorum for the transaction of business.
G. Tie Votes

i. If the Board reaches a tie vote at any duly called meeting of the Board at which a quorum is present on any action item within the authority of the Board, as provided by this Agreement, then the matter may either be reconsidered by the Board and another vote taken or the matter may be tabled for a future date.

H. Meetings

i. Regular Meetings: The Board shall hold one regular meeting each quarter.

ii. Special Meetings: The Board Chair may call a special meeting as the need requires and based on Board availability.

iii. Notice of Meetings: All meetings of the Board shall be noticed and held in accordance with the New Mexico Open Meetings Act.

I. Minutes

i. The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to every member of the Board, including ex-officio members.

J. By-laws

i. The Board shall adopt such by-laws or amend rules or regulations for the conduct of its affairs as it deems necessary.

K. Director

i. The Board shall hire a Director on behalf of the Authority.

ii. The Director's salary, retirement, compensation and bonuses, along with any and all employment-related benefits for, the Director will be included in the annual budget for the Authority and will be paid, or provided for, by the Authority.

iii. In the event that the Director is unable to fulfill his duties for a protracted period of time (being 30 or more continuous days), the Board shall select a designee to perform the duties of the Director on an interim basis.
5. **POWERS OF THE BOARD**

The Authority, through its Director, shall be the administering agency authorized to exercise all powers common to each of the parties with respect to solid waste facilities, and services, including but not limited to the following:

A. To make and enter into contracts;

B. To apply for and accept grants, loans, financial guarantees and other financial assistance from private and public, including state and federal, agencies, institutions and entities;

C. To make plans and conduct studies related to the operation, collection, management, storage, and disposal of solid waste and recyclables;

D. To acquire, construct, operate and maintain, repair, replace, expand and close Authority facilities and infrastructure;

E. To acquire and dispose of real property, vehicles, machinery, equipment, tools, and any other property reasonably related to its purpose;

F. To condemn property for public use;

G. To sue and be sued in its own name;

H. To incur debts subject to the limitations of this Agreement and to issue revenue bonds in accordance with Section 11-1-7, NMSA 1978 as amended subject to the limitations of this Agreement;

I. To set rates which are at least sufficient to pay all operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for revenue bonds issued pursuant to this Agreement, and all other costs necessarily incurred by the Authority;

J. To operate regional solid waste collection services within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

K. To operate a regional recycling program within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

L. To bill and collect fees based on usage and the rates set by the Authority and establish a procedure for the resolution of disputed fees, provided that such functions may be performed by the fiscal agent as further provided in this Agreement;

M. To determine eligibility of customers outside of the Authority's boundaries;
N. To impose conditions on the use of the Authority’s facilities;
O. To suspend authorization to use the Authority's facilities, for nonpayment or failure to abide by the rules and regulations of the Authority;
P. To adopt resolutions and procedures necessary to carry out the purposes of this Agreement;
Q. To adopt an annual budget;
R. To obtain necessary public liability and property insurance coverage;
S. To use any legally delegable remedies provided under state statute, City ordinance, or County code for the enforcement of actions by and the collection of monies for Authority operations; and,
T. To engage in any other actions or activities reasonably related to the purpose of this Agreement.

6. **DUTIES OF THE DIRECTOR**

Subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits issued to the Authority, the duties of the Director shall include, but are not exclusively limited to the following:

A. The management and supervision of the operations of the Authority in accordance with the adopted annual budget of the Authority.
B. The compliance with all applicable laws, rules, and regulations, including the conditions imposed under the applicable permits issued to the Authority;
C. The negotiation, execution and delivery of agreements, contracts, instruments and other documents in furtherance of the operations of the Authority;
D. The hiring and terminating such personnel as may be required or appropriate to operate and maintain the Authority;
E. To procure and maintain new and existing permits from New Mexico Environment Department;
F. The continued compliance of the Authorities facilities with all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits and registrations;
G. To contract for the services of employees, consultants, and such other persons as it deems necessary including, but not limited to, contract operators for all or any portion of the Authority's solid waste facilities and hauling operations under such terms and conditions as may be established by the Board in the agreements relating to such contract operators; and

H. To consult with and obtain the approval of the Board as necessary to fulfill the purpose of this Agreement.

7. FISCAL AGENT

The Authority shall have the power to serve as its own fiscal agent. However, the Authority shall also have the power to enter into a contract with any other public or private organization to provide fiscal agent services should the Authority so choose, subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations.

8. PURCHASE AND OWNERSHIP OF ASSETS

A. The parties owned a 640-acre regional landfill tract commonly known as the Corralitos Regional Landfill as joint tenants and have deeded their interest in the Corralitos property to the Authority.

B. The Authority may acquire and sell any real property and personal property as is reasonably necessary to implement this Agreement and to conduct its business. All such assets of the Authority, whether real or personal property, shall be owned in the name of the Authority.

9. FINANCING / REVENUE BONDS

A. The Authority shall have the power to issue bonds, to co-issue bonds with one or more governmental entities, and to act as the administering agency of such revenue bonds and to secure such bonds by irrevocable pledges of the net revenues derived from its operations.

B. The Authority shall also have the power to pledge its net revenues and to determine the priority of payment to any revenue bonds, to establish irrevocable liens on such net revenues for the payment of such revenue bonds and to make such covenants as are necessary or advisable with respect to such revenue bonds;

C. Additionally, the proceeds of the 1/16% Municipal Environmental Services Gross Receipts Tax of the City and the 1/8% County Environmental Services Gross Receipts Tax of the County may be pledged as additional security for such bond issuance with the consent of the appropriate governing body.
D. Any such revenue bonds shall be issued in accordance with the Act and other applicable New Mexico law.

E. Revenue bonds may be issued for the purpose of acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, solid waste facilities or any combination of the foregoing, including payment of all costs incidental to the foregoing and the issuance of any revenue bonds.

F. The proceeds of such revenue bonds may be used to design and construct the landfill, transfer stations and related facilities, and to purchase real and personal property.

G. Rates established by the Authority for use of the Authority’s facilities and services, including the Corralitos Regional Landfill, shall be adequate to meet operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for issued revenue bonds issued pursuant to this Agreement and all other costs necessarily incurred by the Authority.

H. Any excess revenue shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

10. **ANNUAL REPORT**

Every year, on or before the anniversary date of this Agreement, the Authority shall prepare an audited complete financial report prepared by an independent certified public accountant on the operation on the landfill and related facilities to the parties.

11. **NON-APPROPRIATION**

The Authority is obligated to set rates which are at least sufficient to meet debt service coverage requirements for all revenue bonds issued pursuant to this Agreement and to pay: (i) all operation and maintenance expenses, (ii) financial and operational reserve funding, (iii) debt service payments due on all revenue bonds issued pursuant to this Agreement, and (iv) all other costs necessarily incurred by the Authority, pay all operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirement for revenue bonds issued pursuant to this Agreement, and all other costs necessarily incurred by the Authority. If the Authority fails to set adequate rates to pay such expenses, this Agreement will terminate upon written notice of that effect to the City and the County. The Authority’s determination that it is unable to pay such expenses is firm, binding and not subject to review.

12. **TERM**

The term of the Agreement shall be perpetual.
TERMINATION OF AGREEMENT

A. The Agreement may be terminated only by the mutual consent of both parties and shall not be terminated so long as any revenue bonds or other obligations issued pursuant to this Agreement are outstanding or unpaid, including but not limited to any loan made now or in the future by the New Mexico Finance Authority to the Authority. Additionally, the Authority will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, the facilities and assets required for solid waste disposal services, or any part thereof, including any and all extensions and additions that may be made thereto, until Authority revenue bonds shall have been paid in full, except that the Authority may sell any portion of said facilities and assets which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient provision of solid waste disposal services, but in no manner nor to such extent as might prejudice the security for the payment of said revenue bonds, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net revenues of the Authority, i.e., so long as there has not been full payment or defeasance of such revenue bonds.

B. If the Authority is mutually terminated when there is a successor public entity which will carry on the activities of the Authority and assume its obligations, all property, rights and assets of the Authority shall be transferred to the successor public entity. The County will secure the approval from the State Board of Finance if required for such transfer.

C. If the Authority is mutually terminated when there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, all property, rights and assets of the Authority shall be divided between the parties as equitably negotiated.

D. If the Authority is mutually terminated when there is a successor public agency which would undertake some of the functions of the Authority and assume some of its obligations, all property, rights and assets of the Authority shall be equitably allocated by the Board between the successor public entity and the parties. The County will secure the approval from the State Board of Finance if required for such allocation.

E. In the event that the Authority is mutually terminated under the circumstances falling within (C) or (D) above, all decisions of the Board with regard to the equitable determinations of those amounts to be transferred to the parties or any successor shall be final subject to the City’s or the County’s right to seek mediation if there is a dispute as to the Authority’s equitable determinations.

CONSEQUENCES FOR UNILATERAL WITHDRAWAL

South Central Solid Waste Authority
Fifth Amended JPA
Page 11 of 14
Page 87 of 121
A. If one party unilaterally withdraws from the Authority in violation of Section 13 while any loan made now or in the future by the New Mexico Finance Authority to the Authority is outstanding and unpaid: (i) the City and the County will pay the New Mexico Finance Authority in full for such loan; or (ii) the City or the County will assume such loan and all property, rights and assets of the Authority shall be transferred to the party assuming such loan and the assuming party shall assume all obligations and duties of the Authority hereunder, including the obligation to use net revenues of the Authority, or any successor, to pay all revenue bonds issued pursuant to this Agreement, without the consent of the other party, all property, rights and assets of the Authority shall be transferred to the remaining party and the remaining party shall assume all obligations and duties of the Authority hereunder, including the obligation to use net revenues of the Authority to pay all revenue bonds issued pursuant to this Agreement. The party unilaterally withdrawing shall have no claim to a division or partition of Authority assets.

B. The unilateral withdrawal of one party shall not affect such party's pledge of environmental services gross receipts tax revenue as security for any outstanding revenue bonds issued by the City pursuant to the Agreement. The pledge of such tax revenue shall continue in full force and effect until there has been full payment or defeasance of the City's revenue bonds issued pursuant to this Agreement and secured by such tax revenue.

C. The failure of either party to pay usage fees within 180 days of billing shall be considered a unilateral withdrawal.

**45.14. HEADINGS**

The headings of the various sections of this Agreement are inserted only for convenience or reference and are not intended nor shall they be construed to modify, define, limit or expand the intent of the parties.

**46.15. ENTIRE AGREEMENT**

This Agreement represents the entire agreement and understanding between the parties.

**47.16. AMENDMENTS**

The parties acknowledge and agree that this Agreement may be amended in writing upon approval of the governing bodies of each party and that any such amendments shall not become effective until signed by the parties, provided that no such amendment shall materially adversely affect any revenue bonds then outstanding.

**48.17. SEVERABILITY**
This Agreement shall be construed in accordance with the laws of New Mexico. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and reasonable and be legal, valid and enforceable.

19.18. CONSTRUCTION

This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction against the party causing the Agreement to be written.

20.19. AUTHORITY

Each person and/or individual executing this Agreement on behalf of such party represents and warrants that they are duly authorized to execute and sign this Agreement.
24.20. EFFECTIVE DATE

This Agreement shall become effective upon execution by all parties and approval by the New Mexico Department of Finance and Administration.

IN WITNESS WHEREOF, each party has executed this Agreement in duplicate.

REVIEWED AND APPROVED BY:

By: _____________________________
   City of Las Cruces
Dated this _____ day of __________ 2019

By: _____________________________
   Doña Ana County
Dated this _____ day of __________ 2019

By: _____________________________
   City Attorney
   City of Las Cruces
Dated this _____ day of __________ 2019

By: _____________________________
   County Attorney
   Doña Ana County
Dated this _____ day of __________ 2019

By: _____________________________
   Olivia Padilla-Jackson Duff Rodriguez
   Cabinet Secretary
   New Mexico Department of Finance and Administration
Dated this _____ day of __________ 2019
FIFTH AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Agreement is entered into on this _____ day of _____________ 2019, between the CITY OF LAS CRUCES (the "City"), a New Mexico municipal corporation, and the COUNTY OF DOÑA ANA (the "County"), a New Mexico political subdivision.

BACKGROUND

A. Pursuant to Sections 3-48-1 through 3-48-7 NMSA 1978, the City has the power and authority to dispose of solid waste.

B. Pursuant to Sections 4-56-1 through 4-56-3 NMSA 1978, the County has the power and authority to dispose of solid waste.

C. In 1989, the City and the County determined it was in the best interests of their respective residents to jointly undertake to exercise their powers of solid waste disposal in their geographic region.

D. The New Mexico Joint Powers Agreements Act ("Act") authorizes two or more public agencies to jointly exercise by agreement any power common to the contracting parties.

E. The City and the County entered into a joint agreement in 1990, for the purpose of establishing a regional solid waste management master plan, including studies, as necessary, of specific sites for solid waste transfer and/or disposal.

F. The master plan identified and evaluated various forms of management structure available for a regional solid waste facility and made management recommendations to the parties. The parties accepted the master plan by joint resolution on October 13, 1992.

G. The parties at that time desired to institute, through statutory special procedures, a separate, single-purpose solid waste authority to assume responsibility for the management of regional solid waste disposal.

H. The parties recognized that implementation of the regional solid waste disposal plan required that certain obligations be made by the parties prior to the date when a separate entity should be able to assume regional solid waste disposal responsibility.

I. The parties thereafter adopted a Joint Powers Agreement ("JPA") in 1993 and created an interim solid waste board ("interim board") to manage and develop a regional solid waste landfill. The interim board located and evaluated potential sites for the regional solid waste landfill.

J. In May 1994, the parties jointly purchased a 640-acre tract on the west mesa known as the Corralitos tract for the regional landfill, and subsequently named the facility the "Corralitos Regional Landfill".
K. The interim board subsequently determined that it would be difficult to secure financing for the construction of the regional landfill without security or guaranty of payment and therefore each party adopted an environmental services gross receipts tax to provide financing security.

L. The City adopted the 1/16% Municipal Environmental Services Gross Receipts Tax and dedicated the tax revenues for the acquisition, construction, operation, and maintenance of solid waste and related facilities.

M. The County adopted the 1/8% County Environmental Services Gross Receipts Tax and dedicated the tax revenue for the acquisition, construction, operation and maintenance of solid waste and related facilities.

N. The interim board recommended that the parties amend their agreement so as to establish a regional solid waste authority and providing for financing of the regional landfill and related facilities, including purchasing the land and other assets of the parties necessarily acquired by them prior to the issuance of revenue bonds by the City.

O. The City and the County subsequently amended their JPA in 1994 and created the South Central Solid Waste Authority ("Authority") and which was subsequently approved by the New Mexico Department of Finance and Administration.

P. The City and the County subsequently amended the JPA in 2009 and expanded the Authority’s solid waste services to residents located within the unincorporated portions of the County and improved the manner in which such services were performed.

Q. In addition, under that 2009 Amended JPA, the City and the County began providing recycling services to all residents residing within the regional boundaries of the Authority.

R. On October 10, 2017, the County Commission enacted County Resolution No. 2017-91, which granted consent to the Authority to implement solid waste collection services for Dona Ana County residents within the unincorporated areas of the County.

S. The City and the County approved a Fourth Amended and Restated Joint Powers Agreement dated August 7, 2018. However, the New Mexico Finance Authority ("NMFA") has requested revisions to the Fourth Amended and Restated Joint Powers Agreement as a condition for approving a pending loan agreement for a landfill compactor and for future loan agreements with NMFA.

T. The Authority’s Board has recommended that the City and the County approve the revisions requested by NMFA. The requested revisions, which provide additional protection to NMFA that loans made by it will be repaid, are acceptable to City and County staff.
AGREEMENT

1. PURPOSE

The purpose of this Agreement is for the Authority to continue providing and maintaining regional solid waste landfills and related facilities and regional solid waste management programs, including but not limited to:

A. Operating and maintaining regional solid waste landfills and related facilities within its boundaries, and owning and operating the 640-acre tract commonly known as the Corralitos Regional Landfill;

B. Offering and operating regional solid waste collection services within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body; and

C. Offering, implementing, and operating a regional recycling program within the boundaries of the Authority with the consent of or a contract with the appropriate City or County governing body.

2. ESTABLISHMENT

The City and the County hereby reaffirm that the Authority shall exercise powers with respect to solid waste management common to both parties and shall do so in accordance with this Agreement.

3. BOUNDARIES

The geographical boundary of the Authority shall continue to be the City of Las Cruces and the unincorporated portions of the County of Doña Ana, and this Agreement is entered with the primary intent to serve the needs of the citizens within such area. However, nothing in this Agreement shall be construed as preventing the Authority from conducting business outside of such area, including owning property or operating other solid waste facilities or providing solid waste collection services, as approved by the Board as it deems necessary.

4. GOVERNING BODY

A. Board

   i. The Authority shall be governed by its Board, which shall establish its own procedures and such acts so as to carry out the purposes of this Agreement.
B. Members

i. The Board shall consist of eight (8) board members.

1. There shall be three (3) voting members who shall be appointed from the City Council by the Mayor with the consent of the City Council.

2. There shall be three (3) voting members who shall be appointed by the County Chairperson and with the consent of the County Commission.

3. There shall be two (2) ex-officio members who shall be the City Manager and the County Manager, or their designees.

C. Term

i. A member’s term shall expire when his or her official term in office is completed or when the term of the appointing mayor or Chairperson is completed; however, the member shall continue to serve until a new member is appointed.

ii. Members may be reappointed for more than one term.

D. Attendance

i. Attendance is required at all Board meetings and a member shall be removed for failure to attend more than 25% of the regularly scheduled meetings in any twelve (12) month period.

E. Removal

i. A member may be removed for any other reason by a majority vote of their respective City Council or County Commission if the appointing mayor or chairman is in the majority.

F. Voting/Quorum

i. A majority vote of the quorum shall be required for the adoption of a resolution; however, a three-fourths (3/4) vote of all voting members shall be required for the adoption of an ordinance relating to revenue bonds.

ii. A majority of the voting members shall constitute a quorum for the transaction of business.
G. Tie Votes
   i. If the Board reaches a tie vote at any duly called meeting of the Board at which a quorum is present on any action item within the authority of the Board, as provided by this Agreement, then the matter may either be reconsidered by the Board and another vote taken or the matter may be tabled for a future date.

H. Meetings
   i. Regular Meetings: The Board shall hold one regular meeting each quarter.
   ii. Special Meetings: The Board Chair may call a special meeting as the need requires and based on Board availability.
   iii. Notice of Meetings: All meetings of the Board shall be noticed and held in accordance with the New Mexico Open Meetings Act.

I. Minutes
   i. The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to every member of the Board, including ex-officio members.

J. By-laws
   i. The Board shall adopt such by-laws or amend rules or regulations for the conduct of its affairs as it deems necessary.

K. Director
   i. The Board shall hire a Director on behalf of the Authority.
   ii. The Director’s salary, retirement, compensation and bonuses, along with any and all employment-related benefits for, the Director will be included in the annual budget for the Authority and will be paid, or provided for, by the Authority.
   iii. In the event that the Director is unable to fulfill his duties for a protracted period of time (being 30 or more continuous days), the Board shall select a designee to perform the duties of the Director on an interim basis.
5. **POWERS OF THE BOARD**

The Authority, through its Director, shall be the administering agency authorized to exercise all powers common to each of the parties with respect to solid waste facilities, and services, including but not limited to the following:

A. To make and enter into contracts;

B. To apply for and accept grants, loans, financial guarantees and other financial assistance from private and public, including state and federal, agencies, institutions and entities;

C. To make plans and conduct studies related to the operation, collection, management, storage, and disposal of solid waste and recyclables;

D. To acquire, construct, operate and maintain, repair, replace, expand and close Authority facilities and infrastructure;

E. To acquire and dispose of real property, vehicles, machinery, equipment, tools, and any other property reasonably related to its purpose;

F. To condemn property for public use;

G. To sue and be sued in its own name;

H. To incur debts subject to the limitations of this Agreement and to issue revenue bonds in accordance with Section 11-1-7, NMSA 1978 as amended subject to the limitations of this Agreement;

I. To set rates which are at least sufficient to pay all operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for revenue bonds issued pursuant to this Agreement, and all other costs necessarily incurred by the Authority;

J. To operate regional solid waste collection services within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

K. To operate a regional recycling program within the boundaries of the Authority as approved by the appropriate governing bodies as deemed necessary;

L. To bill and collect fees based on usage and the rates set by the Authority and establish a procedure for the resolution of disputed fees, provided that such functions may be performed by the fiscal agent as further provided in this Agreement;

M. To determine eligibility of customers outside of the Authority's boundaries;
N. To impose conditions on the use of the Authority's facilities;

O. To suspend authorization to use the Authority's facilities, for nonpayment or failure to abide by the rules and regulations of the Authority;

P. To adopt resolutions and procedures necessary to carry out the purposes of this Agreement;

Q. To adopt an annual budget;

R. To obtain necessary public liability and property insurance coverage;

S. To use any legally delegable remedies provided under state statute, City ordinance, or County code for the enforcement of actions by and the collection of monies for Authority operations; and,

T. To engage in any other actions or activities reasonably related to the purpose of this Agreement.

6. **DUTIES OF THE DIRECTOR**

Subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits issued to the Authority, the duties of the Director shall include, but are not exclusively limited to the following:

A. The management and supervision of the operations of the Authority in accordance with the adopted annual budget of the Authority.

B. The compliance with all applicable laws, rules, and regulations, including the conditions imposed under the applicable permits issued to the Authority;

C. The negotiation, execution and delivery of agreements, contracts, instruments and other documents in furtherance of the operations of the Authority;

D. The hiring and terminating such personnel as may be required or appropriate to operate and maintain the Authority;

E. To procure and maintain new and existing permits from New Mexico Environment Department;

F. The continued compliance of the Authorities facilities with all applicable laws, rules, and regulations, including the conditions imposed under the applicable New Mexico Environment Department permits and registrations;
G. To contract for the services of employees, consultants, and such other persons as it deems necessary including, but not limited to, contract operators for all or any portion of the Authority's solid waste facilities and hauling operations under such terms and conditions as may be established by the Board in the agreements relating to such contract operators; and

H. To consult with and obtain the approval of the Board as necessary to fulfill the purpose of this Agreement.

7. FISCAL AGENT

The Authority shall have the power to serve as its own fiscal agent. However, the Authority shall also have the power to enter into a contract with any other public or private organization to provide fiscal agent services should the Authority so choose, subject to the adopted annual budget of the Authority and all applicable laws, rules, and regulations.

8. PURCHASE AND OWNERSHIP OF ASSETS

A. The parties owned a 640-acre regional landfill tract commonly known as the Corralitos Regional Landfill as joint tenants and have deeded their interest in the Corralitos property to the Authority.

B. The Authority may acquire and sell any real property and personal property as is reasonably necessary to implement this Agreement and to conduct its business. All such assets of the Authority, whether real or personal property, shall be owned in the name of the Authority.

9. FINANCING / REVENUE BONDS

A. The Authority shall have the power to issue bonds, to co-issue bonds with one or more governmental entities, and to act as the administering agency of such revenue bonds and to secure such bonds by irrevocable pledges of the net revenues derived from its operations.

B. The Authority shall also have the power to pledge its net revenues and to determine the priority of payment to any revenue bonds, to establish irrevocable liens on such net revenues for the payment of such revenue bonds and to make such covenants as are necessary or advisable with respect to such revenue bonds;

C. Additionally, the proceeds of the 1/16% Municipal Environmental Services Gross Receipts Tax of the City and the 1/8% County Environmental Services Gross Receipts Tax of the County may be pledged as additional security for such bond issuance with the consent of the appropriate governing body.
D. Any such revenue bonds shall be issued in accordance with the Act and other applicable New Mexico law.

E. Revenue bonds may be issued for the purpose of acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, solid waste facilities or any combination of the foregoing, including payment of all costs incidental to the foregoing and the issuance of any revenue bonds.

F. The proceeds of such revenue bonds may be used to design and construct the landfill, transfer stations and related facilities, and to purchase real and personal property.

G. Rates established by the Authority for use of the Authority’s facilities and services, including the Corralitos Regional Landfill, shall be adequate to meet operation and maintenance expenses, financial and operational reserve funding, debt service coverage requirements for issued revenue bonds issued pursuant to this Agreement and all other costs necessarily incurred by the Authority.

H. Any excess revenue shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

10. **ANNUAL REPORT**

Every year, on or before the anniversary date of this Agreement, the Authority shall prepare an audited complete financial report prepared by an independent certified public accountant on the operation on the landfill and related facilities to the parties.

11. **NON-APPROPRIATION**

The Authority is obligated to set rates which are at least sufficient to meet debt service coverage requirements for all revenue bonds issued pursuant to this Agreement and to pay: (i) all operation and maintenance expenses, (ii) financial and operational reserve funding, (iii) debt service payments due on all revenue bonds issued pursuant to this Agreement, and (iv) all other costs necessarily incurred by the Authority.

12. **TERM**

The term of the Agreement shall be perpetual.
13. TERMINATION OF AGREEMENT

A. The Agreement may be terminated only by the mutual consent of both parties and shall not be terminated so long as any revenue bonds or other obligations issued pursuant to this Agreement are outstanding or unpaid, including but not limited to any loan made now or in the future by the New Mexico Finance Authority to the Authority. Additionally, the Authority will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, the facilities and assets required for solid waste disposal services, or any part thereof, including any and all extensions and additions that may be made thereto, until Authority revenue bonds shall have been paid in full, except that the Authority may sell any portion of said facilities and assets which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient provision of solid waste disposal services, but in no manner nor to such extent as might prejudice the security for the payment of said revenue bonds, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net revenues of the Authority.

B. If the Authority is mutually terminated when there is a successor public entity which will carry on the activities of the Authority and assume its obligations, all property, rights and assets of the Authority shall be transferred to the successor public entity. The County will secure the approval from the State Board of Finance if required for such transfer.

C. If the Authority is mutually terminated when there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, all property, rights and assets of the Authority shall be divided between the parties as equitably negotiated.

D. If the Authority is mutually terminated when there is a successor public agency which would undertake some of the functions of the Authority and assume some of its obligations, all property, rights and assets of the Authority shall be equitably allocated by the Board between the successor public entity and the parties. The County will secure the approval from the State Board of Finance if required for such allocation.

E. In the event that the Authority is mutually terminated under the circumstances falling within (C) or (D) above, all decisions of the Board with regard to the equitable determinations of those amounts to be transferred to the parties or any successor shall be final subject to the City’s or the County’s right to seek mediation if there is a dispute as to the Authority’s equitable determinations.

14. CONSEQUENCES FOR UNILATERAL WITHDRAWAL

A. If one party unilaterally withdraws from the Authority in violation of Section 13 while any loan made now or in the future by the New Mexico Finance Authority...
to the Authority is outstanding and unpaid: (i) the City and the County will pay the New Mexico Finance Authority in full for such loan; or (ii) the City or the County will assume such loan and all property, rights and assets of the Authority shall be transferred to the party assuming such loan and the assuming party shall assume all obligations and duties of the Authority hereunder, including the obligation to use net revenues of the Authority, or any successor, to pay all revenue bonds issued pursuant to this Agreement. The party unilaterally withdrawing shall have no claim to a division or partition of Authority assets.

B. The unilateral withdrawal of one party shall not affect such party's pledge of environmental services gross receipts tax revenue as security for any outstanding revenue bonds issued by the City pursuant to the Agreement. The pledge of such tax revenue shall continue in full force and effect until there has been full payment or defeasance of the City's revenue bonds issued pursuant to this Agreement and secured by such tax revenue.

C. The failure of either party to pay usage fees within 180 days of billing shall be considered a unilateral withdrawal.

15. HEADINGS

The headings of the various sections of this Agreement are inserted only for convenience or reference and are not intended nor shall they be construed to modify, define, limit or expand the intent of the parties.

16. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding between the parties.

17. AMENDMENTS

The parties acknowledge and agree that this Agreement may be amended in writing upon approval of the governing bodies of each party and that any such amendments shall not become effective until signed by the parties, provided that no such amendment shall materially adversely affect any revenue bonds then outstanding.

18. SEVERABILITY

This Agreement shall be construed in accordance with the laws of New Mexico. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and reasonable and be legal, valid and enforceable.
19. CONSTRUCTION

This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction against the party causing the Agreement to be written.

20. AUTHORITY

Each person and/or individual executing this Agreement on behalf of such party represents and warrants that they are duly authorized to execute and sign this Agreement.

21. EFFECTIVE DATE

This Agreement shall become effective upon execution by all parties and approval by the New Mexico Department of Finance and Administration.

IN WITNESS WHEREOF, each party has executed this Agreement in duplicate.

REVIEWED AND APPROVED BY:

By:___________________________________

City of Las Cruces

Dated this _____ day of ____________ 2019

By:___________________________________

Doña Ana County

Dated this _____ day of ____________ 2019

By:___________________________________

City Attorney

City of Las Cruces

Dated this _____ day of ____________ 2019

By:___________________________________

County Attorney

Doña Ana County

Dated this _____ day of ____________ 2019

By:___________________________________

Olivia Padilla-Jackson

Cabinet Secretary

New Mexico Department of Finance and Administration

Dated this _____ day of ____________ 2019
RESOLUTION NO. ____________
A RESOLUTION APPROVING THE FIFTH AMENDED AND RESTATED JOINT POWERS AGREEMENT CONCERNING SOUTH CENTRAL SOLID WASTE AUTHORITY

The Doña Ana County Commission is informed that:

WHEREAS, the Director of South Central Solid Waste Authority (the “Authority”) has proposed to City and County staff that the Fourth Amended Joint Powers Agreement (“2018 JPA”) dated August 7, 2018, be Amended to provide greater assurance of repayment of debt should the Authority cease to exist because smaller solid waste authorities have lost members and have struggled to maintain financial viability; and

WHEREAS, the Authority Board recommended approval of the Fifth Amended JPA at its February 21, 2019 Board meeting (Board Resolution No. 2019-04) and the City of Las Cruces will be considering approval at its April 1, 2019 meeting; and

WHEREAS, if the City Council and the County Commission approve the Fifth Amended JPA, it would not take effect until approved by the New Mexico Department of Finance and Administration as required by Section 11-1-3, NMSA 1978, of the Joint Powers Agreement Act; and

WHEREAS, County staff is of the opinion that approval is in the best interest of the County,

NOW THEREFORE, be it resolved by the Doña Ana County Board of County Commissioners:

THAT the Fifth Amended and Restated Joint Powers Agreement is hereby approved.

THAT County staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinafore.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

Isabella A. Solis, District 4, Vice-Chairwoman For/Against
Lynn J. Ellins, District 1  For/Against

Ramon S. Gonzalez, District 2  For/Against

Shannon Reynolds, District 3  For/Against

(Vacant), District 5,  For/Against

ATTEST:

Amanda López Askin, Ph.D.
County Clerk
**TITLE OF AGENDA ITEM TO BE CONSIDERED**
RESOLUTION AMENDING THE DOÑA ANA COUNTY AMERICANS WITH DISABILITIES ACT ADVISORY COMMITTEE (ADAAC) BYLAWS.

**SUMMARY OF ITEM TO BE CONSIDERED**
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED
Resolution 2016-30 adopted a set of amended by-laws for the ADAAC. The ADAAC has revised the adopted by-laws and is requesting the BOCC to approve amended by-laws.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**
Resolution.

**SUMMARY OF FINANCIAL IMPACT**
N/A

**ADMINISTRATIVE REVIEW AND APPROVAL**

<table>
<thead>
<tr>
<th>Finance</th>
<th>Legal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchasing</td>
<td>Human Resources</td>
</tr>
<tr>
<td>Planning</td>
<td>Other</td>
</tr>
</tbody>
</table>

**County Manager/Agenda Review**

**Assistant County Manager**

**DOCUMENT CONTROL**

<table>
<thead>
<tr>
<th>Original/s for signature?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return original/s to:</td>
<td>N/A</td>
<td>Name</td>
</tr>
<tr>
<td>Send copy of recorded original/s (resolution and ordinances only) to:</td>
<td>Meg Haines</td>
<td>Name</td>
</tr>
<tr>
<td>Deadline for return of document/s?</td>
<td>Yes, return by:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Page 105 of 121
Doña Ana County
Americans with Disabilities Act Advisory Committee
Amended Bylaws

Executive Summary

Background: The Doña Ana County Americans with Disabilities Act Advisory Committee (the Committee) was established on August 14, 2001 by the Doña Ana County Board of County Commissioners (the Board) under resolution 2001-74. The Board re-established the Committee under resolution 2011-72 on November 8, 2011. Resolution 2001-74 requires the Committee to establish bylaws. Resolution 2012-26 adopted a set of bylaws establishing required operational guidelines and the most recent amendments adopted were through resolution 2016-30.

The Committee has recently reviewed the bylaws and is recommending the following changes:

2.1 Membership-
- Recommendation to add the following: “Committee members have the option to continue in their appointed position at the end of each two (2) year term by indicating their willingness to continue in writing to the Board of County Commissioners. Appointed committee members are limited to three (3) consecutive terms without a break in service.”

3.1 Meetings-
- Recommendation to change the frequency of the meetings from monthly to bi-monthly with the following: “Committee meetings will be held bi-monthly (February, April, June, etc.) and as needed. The Chair has the authority to call special meetings. The Committee will provide proper notice to the public.”

3.4 Quorum-
- Recommendation to change the wording to clarify what constitutes a quorum with the following: “The quorum is based on total membership. A quorum of four (4) shall be sufficient to conduct the business of the Committee with a membership of seven (7), and a quorum of five (5) shall be sufficient to conduct the business of the Committee with a membership of nine (9).”

3.5 Voting-
- Recommendation to change the wording to clarify voting with the following: “A simple majority of the quorum present shall be required to adopt any resolution, make any recommendation or take any other official action of the Committee. A super-majority of two-thirds (2/3) of the full membership of the Committee shall be required to amend these bylaws.”

Requested Action: Adopt the resolution approving amended bylaws.
Article I. Overview of the Doña Ana County ADA Advisory Committee

1.1 Purpose: The Doña Ana County Advisory Committee on the Americans with Disabilities Act, also referred to as the County ADA Advisory Committee, (the Committee) is a committee created by the Board of County Commissioners of Doña Ana County (the Board) to act in an advisory capacity in accordance with Resolutions adopted by the Board, including Resolutions 2001-74 and 2015-49 which established the Committee. Consistent with Resolutions 2001-74 and 2015-49, upon approval by the Committee, these by-laws are to be submitted to the Board for review and approval.

1.2 Mission: The Committee exists to advise and assist the Board in gathering information and making recommendations to the Board on how best to address issues related to the American with Disabilities Act (ADA), specifically but not necessarily limited to identifying problems and developing a plan to bring all Doña Ana County buildings, facilities, parks, public access ways, and policies and procedures into compliance with the ADA and to otherwise assist the residents of Doña Ana County who have special needs as recognized by the ADA.

Article II. Organizational Structure of the Committee

2.1 Membership: The members of the Committee are appointed by the Board and each shall serve a two (2) year term, except for staff positions who serve as permanent committee members. Committee members have the option to continue in their appointed position at the end of each two (2) year term by indicating their willingness to continue in writing to the Board of County Commissioners. Appointed committee members are limited to three consecutive terms without a break in service.

The Committee’s membership shall be reviewed by the Board periodically, at the request of any two (2) members of the Board, upon the County Manager’s recommendation, or at the request of a majority of the current membership of the Committee.

If a vacancy occurs, the Committee will, as soon as is practical, request that the county staff member assigned to the Committee begin the process of filling the vacancy by soliciting applications and placing the applications before the Board for consideration along with the Committee’s recommendations for appointment.

2.2 Officers: The Committee shall elect three members to act as Chair, Vice-Chair, and Secretary. Officers shall be elected by a majority vote of the present membership.

The Committee shall reconsider the election of officers on an annual basis or upon a majority vote of the present membership.

The Chair shall call to order, declare a quorum, adjourn, and otherwise facilitate Committee meetings.

Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019

Page 1
and act as the primary liaison for the Committee to county staff and to the Board.

The Vice-Chair shall serve as Chair in the absence of the Chair.

The Secretary will ensure accurate minutes are taken and approved.

The county staff member assigned to the Committee shall determine and declare a quorum at Committee meetings, monitor attendance, oversee the preparation and distribution of all reports including minutes of Committee meetings and shall act as Chair in the absence of both the Chair and the Vice-Chair.

2.3 Sub-Committees: The Committee may establish (and eliminate) subcommittees from time to time as the Committee deems necessary. Additional individuals who are not members of the Committee may be appointed to a subcommittee created by the Committee.

Article III. Procedures of the Committee

3.1 Meetings: Committee meetings will be held on a monthly basis—bi-monthly (February, April, June, etc.) and as needed. The Chair has the authority to call special meetings. The Committee will provide proper notice to the public.

3.2 Notice of Meetings: Written notice of all meetings will include the date, time, and location of the meeting and will be circulated at least one week in advance to all members whenever possible. At the same time that a meeting notice is circulated to the members, a meeting notice will also be provided to the County's Public Information Officer for media distribution. Meeting notices will be posted prominently in the Doña Ana County Government Center. Meeting cancellations will be published as soon as possible in the same manner as meeting notices.

3.3 Attendance: Whenever a member is unable to attend a meeting of the Committee, the member should notify the Chair as soon as possible prior to the meeting.

All absences will be duly recorded in the meeting minutes. The Committee may re-examine an individual’s membership and recommend to the Board that a member be replaced if a member is absent for three (3) consecutive meetings or from 33% of the regularly scheduled meetings in a given calendar year, unless excused by the Chair for good cause. Absences from emergency or special meetings will not be recorded against a member in calculating the percent of absences. Special exceptions on the removal of members for absences may be made by the Chair when the absences are due to health, time-limited extenuating circumstances, or other extraordinary circumstances, and the absences do not affect the ability of the Board to maintain a quorum.

3.4 Quorum: Fifty percent (50%) plus one. The quorum is based on the total membership of the Committee. A quorum of four (4) and shall be sufficient to conduct the business of the Committee with a membership of seven (7), and a quorum of five (5) shall be
sufficient to conduct the business of the Committee with a membership of nine (9).

The Chair may cancel a meeting for lack of a quorum.

3.5 Voting: A simple majority of the quorum present shall be required to adopt any resolution, make any recommendation or take any other official action of the Committee, sufficient to conduct business on an item included on the agenda. A super-majority (2/3) of two-thirds (2/3) of the full membership of the Committee shall be required to amend these by-laws.

3.6 Agenda: The agenda for meetings of the Committee must be approved by the Chair or designee.

Any member of the Committee may request an item be placed on the agenda.

A majority of the quorum present may remove any item from the agenda or postpone its discussion until a future meeting.

Whenever possible the agenda for the meeting shall be distributed at least one (1) week in advance of a scheduled meeting; the agenda may be distributed by e-mail to those who have consented to the use of e-mail for this purpose.

Adopted this 12th day of April-March 2019.

The Doña Ana County Advisory Committee on the Americans with Disabilities Act

Shelly Nichols Shaw, Chair

Rosie G. Talamantes, Vice-Chair

Selma Nevarez, Secretary

Diana Murillo Trujillo, Member

Victor Uranga, TA, Member

George Phillips,

Member

Meg Haines, Member

Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019

Page 109 of 121
Article I. Overview of the Doña Ana County ADA Advisory Committee

1.1 Purpose: The Doña Ana County Advisory Committee on the Americans with Disabilities Act, also referred to as the County ADA Advisory Committee, (the Committee) is a committee created by the Board of County Commissioners of Doña Ana County (the Board) to act in an advisory capacity in accordance with Resolutions adopted by the Board, including Resolutions 2001-74 and 2015-49 which established the Committee. Consistent with Resolutions 2001-74 and 2015-49, upon approval by the Committee, these by-laws are to be submitted to the Board for review and approval.

1.2 Mission: The Committee exists to advise and assist the Board in gathering information and making recommendations to the Board on how best to address issues related to the American with Disabilities Act (ADA), specifically but not necessarily limited to identifying problems and developing a plan to bring all Doña Ana County buildings, facilities, parks, public access ways, and policies and procedures into compliance with the ADA and to otherwise assist the residents of Doña Ana County who have special needs as recognized by the ADA.

Article II. Organizational Structure of the Committee

2.1 Membership: The members of the Committee are appointed by the Board and each shall serve a two (2) year term, except for staff positions who serve as permanent committee members. Committee members have the option to continue in their appointed position at the end of each two (2) year term by indicating their willingness to continue in writing to the Board of County Commissioners. Appointed committee members are limited to three consecutive terms without a break in service.

The Committee’s membership shall be reviewed by the Board periodically, at the request of any two (2) members of the Board, upon the County Manager’s recommendation, or at the request of a majority of the current membership of the Committee.

If a vacancy occurs, the Committee will, as soon as is practical, request that the county staff member assigned to the Committee begin the process of filling the vacancy by soliciting applications and placing the applications before the Board for consideration along with the Committee’s recommendations for appointment.

2.2 Officers: The Committee shall elect three members to act as Chair, Vice-Chair, and Secretary. Officers shall be elected by a majority vote of the present membership.

The Committee shall reconsider the election of officers on an annual basis or upon a majority vote of the present membership.

The Chair shall call to order, declare a quorum, adjourn, and otherwise facilitate Committee meetings.

Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019
and act as the primary liaison for the Committee to county staff and to the Board. The Vice-Chair shall serve as Chair in the absence of the Chair.

The Secretary will ensure accurate minutes are taken and approved.

The county staff member assigned to the Committee shall determine and declare a quorum at Committee meetings, monitor attendance, oversee the preparation and distribution of all reports including minutes of Committee meetings and shall act as Chair in the absence of both the Chair and the Vice-Chair.

2.3 Sub-Committees: The Committee may establish (and eliminate) subcommittees from time to time as the Committee deems necessary. Additional individuals who are not members of the Committee may be appointed to a subcommittee created by the Committee.

Article III. Procedures of the Committee

3.1 Meetings: Committee meetings will be held bi-monthly (February, April, June, etc.) and as needed. The Chair has the authority to call special meetings. The Committee will provide proper notice to the public.

3.2 Notice of Meetings: Written notice of all meetings will include the date, time, and location of the meeting and will be circulated at least one week in advance to all members whenever possible. At the same time that a meeting notice is circulated to the members, a meeting notice will also be provided to the County's Public Information Officer for media distribution. Meeting notices will be posted prominently in the Doña Ana County Government Center. Meeting cancellations will be published as soon as possible in the same manner as meeting notices.

3.3 Attendance: Whenever a member is unable to attend a meeting of the Committee, the member should notify the Chair as soon as possible prior to the meeting.

All absences will be duly recorded in the meeting minutes. The Committee may re-examine an individual's membership and recommend to the Board that a member be replaced if a member is absent for three (3) consecutive meetings or from 33% of the regularly scheduled meetings in a given calendar year, unless excused by the Chair for good cause. Absences from emergency or special meetings will not be recorded against a member in calculating the percent of absences. Special exceptions on the removal of members for absences may be made by the Chair when the absences are due to health, time-limited extenuating circumstances, or other extraordinary circumstances, and the absences do not affect the ability of the Board to maintain a quorum.

3.4 Quorum: The quorum is based on total membership. A quorum of four (4) shall be sufficient to conduct the business of the Committee with a membership of seven (7), and a quorum of five (5) shall be sufficient to conduct the business of the Committee with a membership of nine (9).

Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019
The Chair may cancel a meeting for lack of a quorum.

3.5 Voting: A simple majority of the quorum present shall be required to adopt any resolution, make any recommendation or take any other official action of the Committee. A super-majority of two-thirds (2/3) of the full membership of the Committee shall be required to amend these by-laws.

3.6 Agenda: The agenda for meetings of the Committee must be approved by the Chair or designee.

Any member of the Committee may request an item be placed on the agenda.

A majority of the quorum present may remove any item from the agenda or postpone its discussion until a future meeting.

Whenever possible the agenda for the meeting shall be distributed at least one (1) week in advance of a scheduled meeting; the agenda may be distributed by e-mail to those who have consented to the use of e-mail for this purpose.

Adopted this 12th day of March 2019.

The Doña Ana County Advisory Committee on the Americans with Disabilities Act

Shelly Nichols Shaw, Chair

Rosie G. Talamantes, Vice-Chair

Selma Nevarez, Secretary

Diana Murillo Trujillo, Member

George Phillips, Member

Meg Haines, Member

Victor Uranga, Member (Interim)

Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019
RESOLUTION NO. 2019-____

RESOLUTION APPROVING THE AMENDED BYLAWS OF THE DOÑA ANA COUNTY ADVISORY COMMITTEE ON THE AMERICANS WITH DISABILITIES ACT

WHEREAS, on August 14, 2001, the Doña Ana County Board of County Commissioners (the Board) established the Doña Ana County Advisory Committee on the Americans with Disabilities Act (AKA the County ADA Advisory Committee) (the Committee) under Resolution 2001-74; and

WHEREAS, on November 8, 2011, the Board re-established the Committee under Resolution 2011-72 pursuant to the requirements adopted under Resolution 2001-74; and

WHEREAS, Resolution 2001-74 requires, in part, that the Committee adopt a set of bylaws establishing its operational guidelines and present the adopted bylaws to the Board for approval; and

WHEREAS, Resolution 2012-26 adopted a set of bylaws establishing the required operational guidelines; and

WHEREAS, Resolution 2016-30 approved amendments to said bylaws; and

WHEREAS, the Committee desires the Board to approve amendments to said bylaws;

THEREFORE, IT IS HEREBY RESOLVED that the Board of County Commissioners of Doña Ana County, New Mexico, amends the bylaws of the Doña Ana County ADA Advisory Committee as attached hereto.

ADOPTED this 12th day of March 2019.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

Isabella A. Solis, District 4, Vice Chairwoman For/Against

Lynn J. Ellins, District 1 For/Against

Ramon S. Gonzalez, District 2 For/Against

Shannon Reynolds, District 3 For/Against

Vacant, District 5 For/Against

ATTEST:

Amanda López Askin, Ph.D.
County Clerk
RESOLUTION AMENDING THE DOÑA ANA COUNTY AMERICANS WITH DISABILITIES ACT ADVISORY COMMITTEE (ADAAC) GOALS AND OBJECTIVES.

Resolution 2012-47 adopted goals and objectives for the ADAAC. The ADAAC is requesting the BOCC to approve amended goals and objectives.

Executive summary. Red lined version of goals and objectives and amended goals and objectives.

N/A

ADMINISTRATIVE REVIEW AND APPROVAL

Finance  Legal  County Manager/Agenda Review
Purchasing  Human Resources  Assistant County Manager
Planning  Other

DOCUMENT CONTROL

Original/s for signature? Yes No  For Recording? Yes No
Return original/s to: N/A Name Dept.
Send copy of recorded original/s (resolution and ordinances only) to: Meg Haines Name HR Dept.
Deadline for return of document/s? Yes, return by: N/A or No
Doña Ana County
Americans with Disabilities Act Advisory Committee
Amended Goals and Objectives

Executive Summary

Background: The Doña Ana County Americans with Disabilities Act Advisory Committee (the Committee) was established on August 14, 2001 by the Doña Ana County Board of County Commissioners (the Board) under resolution 2001-74. The Board re-established the Committee under resolution 2011-72 on November 8, 2011. Resolution 2015-49 requires the Committee to recommend written and prioritized goals and objectives to the Board.

The Committee has recently completed the following goals and objectives:

- Work with County Facilities and Parks staff to compile an accurate list of all County buildings and facilities and include a comprehensive summary of any ADA deficiencies;
- Assess all County buildings and facilities for compliance with the ADA;
- Prioritize required improvements for County buildings and facilities;
- Identify County programs, policies, and procedures that need to be modified to comply with the ADA;
- Update of the County’s ADA Transition Plan

The completed items have been removed from the list and the following were changed or added:

- Continue to track improvements to County buildings and facilities;
- Make recommendations to enhance training for County staff to familiarize them on the ADA rules, laws, and compliance; and
- Monitor emerging policies & procedures, laws, and regulations related to the ADA and relevant to the Committee’s mission.

Requested Action: Adopt the resolution approving amended goals and objectives.
DOÑA ANA COUNTY ADA ADVISORY COMMITTEE

Goals and Objectives

1. Update Transition Plan.

2. Bring all County buildings and facilities into full compliance with the ADA.
   A. Continue to track improvements to County buildings and facilities.

Assess all County buildings and facilities for compliance with the ADA.

Prioritize required improvements for County buildings and facilities.

Identify County programs, policies, and procedures that need to be modified to comply with the ADA.

3. Enhance County buildings, facilities, programs, policies, and procedures to improve access, participation, and effectiveness for County residents with disabilities.

   A. Identify non-mandated improvements or alterations to County buildings and facilities that would improve accessibility.

   B. Encourage effective communication between members of the community with disabilities and policymakers.

   C. Make recommendations to enhance training for County staff to familiarize them on the ADA rules, laws, and compliance.

4. Promote improvements to privately-owned buildings and facilities that enhance the lives of residents impacted by disabilities.

Tasks:

1. Compile information on the barriers to accessibility that must be addressed when assessing County buildings, facilities, policies, and programs.

2. Work with County Facilities and Parks staff to compile an accurate list of all County buildings and facilities and include a comprehensive summary of any ADA deficiencies.

3. Prioritize improvement projects to promote the most efficient use of public resources in addressing the identified deficiencies.

4. Evaluate whether any policy, procedure, or logistical changes can be made to alleviate or eliminate any existing barriers to access to services, particularly to services determined to be essential for health and safety (i.e. law enforcement and other emergency services).

ADA Advisory Committee
June 28, 2012 Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019
Page 1
53. Review the scope of County services with the appropriate County departments.

64. Review County ordinances, policies, and procedures as they pertain to the ADA and make appropriate recommendations.

55. Monitor emerging policies & procedures, laws, and regulations related to the ADA and relevant to the Committee’s mission.

76. Work with the Board, County Manager, and other staff to:

   A. Identify substantive areas where training is needed to ensure that County staff appropriately address the special needs of the disabled community.

   B. Identify appropriate sources of needed training.

   C. _____

   D. B. _____ Make recommendations to Human Resources.

87. Work to maximize public input concerning the work of the Committee and of the County as a governmental entity through effective communication.

   A. Use multi-media techniques for soliciting and receiving input from the public.

   B. Use multi-media techniques for distributing meeting notices and information about the on-going activities of the Committee and the County.

   C. Create a working relationship and coordinate activities with other New Mexico political subdivisions, municipalities, or departments, instrumentalities, or agencies of the state of New Mexico to collaborate on ADA needs throughout the County.
DOÑA ANA COUNTY ADA ADVISORY COMMITTEE

Goals and Objectives

1. Update Transition Plan.

2. Bring all County buildings and facilities into full compliance with the ADA.
   A. Continue to track improvements to County buildings and facilities.

3. Enhance County buildings, facilities, programs, policies, and procedures to improve access, participation, and effectiveness for County residents with disabilities.
   A. Identify non-mandated improvements or alterations to County buildings and facilities that would improve accessibility.
   B. Encourage effective communication between members of the community with disabilities and policymakers.
   C. Make recommendations to enhance training for County staff to familiarize them on the ADA rules, laws, and compliance.

Tasks:

1. Prioritize improvement projects to promote the most efficient use of public resources in addressing the identified deficiencies.

2. Evaluate whether any policy, procedure, or logistical changes can be made to alleviate or eliminate any existing barriers to access to services, particularly to services determined to be essential for health and safety (i.e. law enforcement and other emergency services).

3. Review the scope of County services with the appropriate County departments.

4. Review County ordinances, policies, and procedures as they pertain to the ADA and make appropriate recommendations.

5. Monitor emerging policies & procedures, laws, and regulations related to the ADA and relevant to the Committee’s mission.

6. Work with the Board, County Manager, and other staff to:
   A. Identify substantive areas where training is needed to ensure that County staff appropriately address the special needs of the disabled community.
   B. Make recommendations to Human Resources.

ADA Advisory Committee
Revised by Committee: December 11, 2018. Approved by BOCC: March 12, 2019
Page 1
7. Work to maximize public input concerning the work of the Committee and of the County as a governmental entity through effective communication.

   A. Use multi-media techniques for soliciting and receiving input from the public.

   B. Use multi-media techniques for distributing meeting notices and information about the on-going activities of the Committee and the County.

   C. Create a working relationship and coordinate activities with other New Mexico political subdivisions, municipalities, or departments, instrumentalities, or agencies of the state of New Mexico to collaborate on ADA needs throughout the County.
RESOLUTION NO. 2019-____

RESOLUTION APPROVING AMENDED GOALS AND OBJECTIVES
OF THE DOÑA ANA COUNTY ADVISORY COMMITTEE ON THE AMERICANS WITH
DISABILITIES ACT

WHEREAS, on August 25, 2015, the Doña Ana County Board of County Commissioners (the Board) re-established the Doña Ana County Advisory Committee on the Americans with Disabilities Act (AKA the County ADA Advisory Committee) (the Committee) under Resolution 2015-49; and

WHEREAS, Resolution 2015-49 requires the County ADA Advisory Committee to recommend written and prioritized goals and objectives that address problems with County facilities, operations, services, policies and procedures, and may also include opportunities to enhance the lives of the County residents with special needs beyond the mandates of the law. The goals and objectives of the County ADA Advisory Committee shall be reviewed by the Board on at least an annual basis; and

WHEREAS, the Committee desires the Board to approve amendments to goals and objectives;

THEREFORE, IT IS HEREBY RESOLVED that the Board of County Commissioners of Doña Ana County, New Mexico, amends the goals and objectives of the Doña Ana County ADA Advisory Committee as attached hereto.

ADOPTED this 12th day of March 2019.

BOARD OF COUNTY COMMISSIONERS OF
DOÑA ANA COUNTY, NEW MEXICO

<table>
<thead>
<tr>
<th>Name</th>
<th>District</th>
<th>For/Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isabella A. Solis, District 4, Vice Chairwoman</td>
<td>For/Against</td>
<td></td>
</tr>
<tr>
<td>Lynn J. Ellins, District 1</td>
<td>For/Against</td>
<td></td>
</tr>
<tr>
<td>Ramon S. Gonzalez, District 2</td>
<td>For/Against</td>
<td></td>
</tr>
<tr>
<td>Shannon Reynolds, District 3</td>
<td>For/Against</td>
<td></td>
</tr>
<tr>
<td>Vacant, District 5</td>
<td>For/Against</td>
<td></td>
</tr>
</tbody>
</table>

ATTEST:

Amanda López Askin, Ph.D.
County Clerk